

Stenographic Transcript Of

HEARINGS

Before The

Government Information and
Individual Rights Subcommittee

COMMITTEE
ON
GOVERNMENT OPERATIONS

HOUSE OF REPRESENTATIVES

SECRET SERVICE AND CENTRAL INTELLIGENCE AGENCY
EXEMPTIONS IN THE PRIVACY ACT OF 1974

MARCH 5, 1975

Washington, D. C.

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(703) 920-7680

EXEMPTIONS IN THE PRIVACY ACT OF 1974

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WEDNESDAY, MARCH 5, 1975

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House of Representatives,

Government Information and Individual Rights Subcommittee of the Committee on Government Operations,

Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to call, in room 2203, Rayburn House Office Building, Hon. Bella Abzug (chairwoman of the subcommittee) presiding.

Present: Representatives Abzug, Harrington, Maguire, Ry Brooks, Steiger, McCloskey, and Brown.

Staff Members Present: William G. Phillips, Staff Director; L. James Kronfeld, Counsel; Steve Daniels, Minority Staff Counsel; and Nancy Wenzel, Clerk.

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2 connected with certain exemption provisions included in the
3 Privacy Act of 1974, enacted last year. These provisions
4 apply to the Central Intelligence Agency and to the U.S. Secret
5 Service, and exempt those agencies from access and disclosure
6 requirements to individuals under the Privacy Act.

7 Next week we will have testimony from the Treasury Department
8 concerning the Secret Service exemption and from the
9 Internal Revenue Service concerning certain of its intelligence
10 gathering activities that are affected by still other provisions
11 of the Privacy Act.

12 We should explain for the hearing record the background
13 of these hearings. They stem from assurances given the House
14 last November 21st in a colloquy between the then chairman of
15 the Foreign Operations and Government Information Subcommittee
16 Mr. Moorhead, acting as floor manager of the privacy bill,
17 H.R. 16373, and the ranking minority member of the subcommittee,
18 the gentleman from Illinois, Mr. Erlenborn.

19 During the debate on my amendment to eliminate the so-called
20 "Secret Service exemption" in the privacy bill, there
21 was considerable discussion over the collection, maintenance,
22 and use of a computerized protective intelligence list of
23 individuals by the Secret Service under authority of section
24 3056 of title 18, United States Code.

25 Our studies of such list indicated evidence of abuse in

2 because of their anti-war activities or other political beliefs
3 not because they posed any threat to the safety of the Presi-
4 dent or other governmental officials.

5 In conceding the likelihood of such abuses, the then
6 chairman of the subcommittee promised to hold hearings early in
7 the new Congress to fully pursue the matter. The ranking
8 minority member of the subcommittee concurred with this pro-
9 cedure and my amendment was subsequently defeated.

10 Although neither of these gentlemen are currently members
11 of the reorganized Government Information and Individual Right
12 Subcommittee, which I now chair in the 94th Congress, our sub-
13 committee decided at our recent organizational meeting to
14 schedule these hearings in order to fulfill the commitment made
15 last November so that the need for amendments to the Privacy
16 Act of 1974 could be put into proper focus.

17 I also offered an amendment last November 21st to elimi-
18 nate from the privacy bill the general exemption for the Central
19 Intelligence Agency. This is in the record at page H10955.

20 At that time, I argued that such exemption was too broad
21 and that sensitive CIA records could be protected under the
22 specific exemption provisions of subsection (k) of the bill.

23 I further commented that "there is much information. . .
24 that the CIA collects about individuals that is totally un-
25 related to the national security functions of the CIA."

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1 Since passage of the privacy bill, there has, of course,
2 been the public disclosures of CIA's "domestic operations"
3 allegedly involving some 10,000 Americans. Several different
4 Executive and Congressional investigations have been authorized
5 to probe various intelligence-gathering operations, including
6 the CIA. However, our subcommittee's hearings will concentrate
7 on the Privacy Act implications of such CIA domestic intelli-
8 gence operations as they affect the privacy rights of Americans
9 and how they impact upon the general exemption provided the CIA
10 in subsection (j) (1) of the Act.

11 The witness today will be CIA Director William E. Colby,
12 who will discuss the agency's exemption under the Privacy Act,
13 and related matters connected with its domestic intelligence
14 activities.

15 IRS Commissioner Donald C. Alexander and Assistant
16 Secretary of the Treasury David R. Macdonald will testify
17 next week. Mr. Alexander will discuss the activities of the
18 IRS Special Services Staff, as well as other intelligence-
19 gathering activities affecting individuals that is or has been
20 carried on by IRS, including the relationship of such activi-
21 ties to provisions in the Privacy Act relating to investi-
22 gatory material compiled for law enforcement purposes.

23 Mr. Macdonald will discuss the Privacy Act's exemption
24 of the Secret Service Protective Intelligence record system
25 and other similar systems of personal information collected

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1 and maintained pursuant to section 3056 of title 18, United
2 States Code.

3 As you know, the Privacy Act becomes effective on Septem-
4 ber 27, 1975. Guideline interpretations are now being pre-
5 pared by the Office of Management and Budget for agencies' use
6 in drafting their own regulations, as is provided for in sec-
7 tion 6 of the Act.

8 I might say that I have already introduced H.R. 169 and
9 H.R. 2635 to strike the two agency exemptions and make another
10 substantive change in the Privacy Act. While the hearings today
11 are not on the bills themselves, the subcommittee hopes to
12 develop information here that will help guide us in our later
13 decisions concerning the consideration of these legislative
14 proposals to amend the Privacy Act.

15 In accordance with our Committee Rule 17, and provisions
16 of the House rules on radio and television coverage, a majority
17 vote is necessary to authorize such coverage of our hearings
18 today.

19 Last evening I approved the preliminary request for lights
20 to be installed.

21 Is there any objection by any member of the subcommittee
22 as to the televising of these hearings?

23 (No response.)

24 Ms. Abzug. If there is no objection, let the record show
25 that the vote for coverage of the open hearings today was
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1 unanimously approved.

2 Will you come forward, Mr. Colby?

3 Mr. Colby, do you swear that the testimony you are about
4 to give will be the truth, the whole truth, and nothing but
5 the truth, so help you God?

6 TESTIMONY OF WILLIAM E. COLBY, DIRECTOR,

7 CENTRAL INTELLIGENCE AGENCY

8 Mr. Colby. I do.

9 Ms. Abzug. Thank you, Mr. Colby.

10 Will you proceed, Mr. Colby, with your testimony?

11 Mr. Colby. Madam Chairwoman --

12 Ms. Abzug. Before you start, is it possible to summarize
13 your testimony? We all have copies of it here. It might be
14 useful, inasmuch as a couple of us on this subcommittee this
15 morning are due to go to the White House at 11:15. This
16 might expedite our hearings and enable us to get as far as
17 we can before we have to recess.

18 Mr. Colby. I have tried to cover all the things I think
19 you will be interested in, Madam Chairwoman.

20 The Privacy Act of 1974 in section 3(j) exempts the
21 Central Intelligence Agency from all but certain of the Act's
22 provisions. This partial exemption of the Agency followed a
23 series of discussions with the committees during the con-
24 sideration and enactment of the Privacy Act. In these dis-
25 cussions, the Agency pointed out that a full response to

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1 certain of the provisions of the Privacy Act would jeopardize
2 the sensitive sources and methods used in our intelligence
3 activities.

4 In discussions with the staff, some appropriate language
5 was requested in the Act which would recognize this fact, and
6 I am happy to say that the committees and the Congress under-
7 stood this need.

8 Two alternative ways of accomplishing this were considered.
9 One was an exemption of the Central Intelligence Agency from
10 all but certain of the provisions of the Act. The other was
11 an exemption of "intelligence sources and methods" from the
12 provisions of the Act.

13 The Central Intelligence Agency indicated its satisfaction
14 with either arrangement, and eventually the exemption of the
15 Agency by name was selected by the committee as the best way of
16 accomplishing the end sought.

17 Madam Chairwoman, the Agency is fully understanding of the
18 policy represented in the Privacy Act of 1974. As urged in
19 this committee's report on the bill which became the Act, we
20 intend to respond to requests under its provisions to the
21 extent that responses would not jeopardize intelligence sources
22 and methods or otherwise fall within the appropriate exemptions
23 provided by the Act.

24 While the Act itself is not effective until September of
25 1975, and while the CIA does have an exemption, we will, in

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1 response to requests, furnish to requesters such material as we
2 have to the extent that it does not reveal intelligence sources
3 and methods or is not material subject to determination by
4 other agencies.

5 Your concern which led to this hearing, Madam Chairwoman,
6 arises understandably from extensive press allegations that
7 CIA conducted a "massive illegal domestic intelligence opera-
8 tion" within the United States. I have flatly denied such a
9 charge before three committees of the Congress, and I am con-
10 fident that the commission appointed by the President to look
11 into these charges and the Select Committees of the Senate and
12 of the House, which undoubtedly will cover this subject in their
13 wider review of U.S. intelligence activities, will support my
14 position.

15 I do not say that CIA never made a mistake. I do say,
16 however, that any such actions were few and far between and
17 were undertaken in the belief that they fell within the statu-
18 tory intelligence mission or the Director's responsibility to
19 protect intelligence sources and methods against unauthorized
20 disclosure.

21 As I have explained elsewhere, the charges in the press
22 against CIA stem from an inaccurate mixture and magnification
23 of two separate matters. Pursuant to the National Security
24 Act and National Security Council directives, it was entirely
25 proper for the Agency to endeavor to ascertain whether any

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1 foreign links existed with the domestic dissident groups which
2 aroused concern starting in mid-1967. Working with the FBI,
3 the Agency looked for such foreign links abroad and followed
4 up leads furnished by the FBI as to such possible foreign links.

5 Included in this was an attempt to determine whether
6 foreign links were established with Americans who traveled or
7 lived abroad, where the FBI capability to do so did not exist.
8 In the course of CIA's work abroad also, the names of certain
9 individual Americans arose in the course of coverage of foreign
10 conferences and other developments, and these were reported to
11 CIA headquarters and thence to the FBI.

12 In this entire program, it was clear that the responsi-
13 bility for internal security belonged to the FBI and the respon-
14 sibility for foreign counter-intelligence work abroad belonged
15 to the CIA. In other words, CIA's operation, Madam Chairwoman,
16 was neither massive, illegal, nor domestic.

17 The second basis for the newspaper charges stemmed from
18 a reporter's learning, to some limited degree, that CIA, in
19 May 1973, conducted a review of past activities which might
20 be questionable. This material was collected and showed that
21 there were a few incidents in which CIA may well have over-
22 stepped its bounds, even though the action was taken in a
23 belief that it was within the CIA's statutory authority.

24 Among these were a few cases wherein CIA developed infor-
25 mants within the anti-war movement in the United States to
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1 establish credentials for travel into areas and among groups
2 abroad which were of foreign intelligence or counter-intelli-
3 gence interest to the United States. In other cases, several
4 informants were developed among certain elements who appeared
5 to pose a threat to the security of the Agency.

6 Over the 27 years of its history, there were also a few
7 individual instances of surveillance, wiretap, or opening of
8 mail which have been outlined in detail in my testimony to
9 Senate and House Appropriations Subcommittees, and the Senate
10 Armed Services Committee, copies of which I submit herewith
11 for your record.

12 Ms. Abzug. Without objection, a copy may be included in
13 the record.

14 (The material referred to follows:)

15
16 (COMMITTEE INSERT)
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1 Mr. Colby. I might save some of your time by referring
2 to the prepared statement with respect to the details of some
3 of these. I can summarize these very quickly for you -- that
4 we have a number of systems of records.

5 Our main system involves several million foreign, politi-
6 cal, military, scientific, economic, technical and cultural
7 personalities. This information is filed alphabetically by the
8 name of the individual within the country of citizenship.

9 The names of some U.S. citizens or permanent resident
10 aliens do appear. We do not know how many. They appear becau
11 they may be associated with somebody else, because we may not
12 know what their nationality is when the item is collected, or
13 we may have run across the name in some other way.

14 A number of American names came into the collection be-
15 cause they are incidentally acquired in the course of our
16 foreign intelligence coverage.

17 A second collection we have is a collection of foreign
18 counter-intelligence names. This stems from a requirement
19 under the National Security Act and the National Security
20 Council that CIA maintain the primary foreign counter-intelli-
21 gence index of the United States. This contains a large numb
22 of people, both foreign and American, suspected or involved
23 with foreign espionage or security services.

24 Madam Chairwoman, over the last five years there have be
25 some 390 attempts abroad by foreigners to recruit Americans t

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1 serve against their country, from 1970 to 1974. The figure
2 for 1974 is a little less than the average, but that is the
3 total. That shows you the problem we face in dealing in this
4 counter-intelligence field.

5 A third system of records is an intelligence document col-
6 lection organized by data, source or topic. This contains the
7 full text of various intelligence reports or documents. It
8 can be searched by any word or combination of letters and,
9 therefore, it can be searched for whether a name of a U.S.
10 citizen might be in it. We do not know and have no way of know-
11 ing how many U.S. citizens' names might be therein.

12 In addition to these collections of our intelligence
13 records, the Agency also maintains a number of other collec-
14 tions of records to do its business, which include the names
15 of U.S. citizens, our personnel records, our following of var-
16 ious press coverages about CIA these days, our Legislative
17 Counsel's working files for his dealings with the Congress, our
18 General Counsel and his connections with various legal matters
19 which involve the Agency, and our Office of Medical Services
20 with its contacts with various medical consultants.

21 The Agency's Office of Security also maintains a number
22 of files which includes security investigations and clearances
23 of our employees, applicants, contractors, sources and con-
24 sultants. Some involve clearance for access to intelligence
25 information for employees of other Government departments, such

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1 as the military.

2 Some of these may include names wherein the individual
3 does not know his name is included in a CIA document. This may
4 stem from the fact that his name came up in the course of a
5 security investigation of an applicant, as a reference or some
6 other way. It also can occur that some of the contractors with
7 whom we deal, we must keep secret the fact that CIA actually is
8 doing the contract from their own employees. This is what we
9 did with respect to the U-2, which was built without any indi-
10 cation it would be used for intelligence purposes when it was.

11 We also kept certain records as an aspect of our responsi-
12 bility for protection of the Agency. These include the normal
13 type of crank mail that is received by any organization, reports
14 of individuals who have threatened or otherwise were believed
15 to be likely to threaten the Agency, one of our field offices
16 in the United States having been bombed on one occasion, and
17 certain name lists developed at various times relating to the
18 suitability of various individuals for possible collaboration
19 or assistance in CIA's operations.

20 As a result of the review of questionable activities under-
21 taken in the summer of 1973, specific directives were issued
22 in the Agency that it would not maintain files on American
23 citizens other than those developed as an incidental aspect
24 of foreign intelligence or counter-intelligence matters or as

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1 Any accumulation of American names for possible use in
2 connection with foreign intelligence matters was directed to
3 be conducted in a fashion to clearly avoid the maintenance of
4 blacklists of any sort.

5 By the very nature of its activity, CIA must record cer-
6 tain names of individuals who do not know they are being
7 recorded. Thus, before it approaches an American on a sensi-
8 tive intelligence matter, it would be less than prudent if CIA
9 did not determine the likely attitude of the individual with
10 respect to the proposal of assistance. If the determination was
11 then made not to approach the individual, a record of that con-
12 sideration would undoubtedly exist, but it would not constitute
13 a blacklist or "dossier" on him.

14 Nadam Chaikwoman, as I have indicated, I believe that some
15 of the material which was collected by CIA over the past 27
16 years may not be appropriate today, although undertaken then
17 under the belief that it fell within the charge on the Director
18 of Central Intelligence to protect intelligence sources and
19 methods or under the belief that it was included within our
20 charge to collect foreign intelligence and counter-intelligence.

21 Over the past several years, CIA's files have been examined
22 with an eye to eliminating material therein which is not appro-
23 priate. In the course of this, a number of files have been
24 destroyed. This process is not complete, however, and, of
25 course, is suspended at this time in response to the

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2 commission and the two Select Committees.

3 I have directed, however, that the segregation process
4 continue in the belief that, after the investigations are
5 completed, the best disposition of these materials is destruc-
6 tion.

7 In the interim, I propose to respect the privacy of the
8 individuals whose names may be involved in such documentation
9 by rejecting requests to make them public.

10 On inquiries by individuals with respect to their own
11 names, I propose to make available to the requester such materia
12 as does not reveal intelligence sources and methods or which
13 does not fall within the responsibility of agencies other than
14 CIA.

15 Madam Chairwoman, the release of CIA information is also a
16 matter of some interest in view of the passage of the effective
17 date of the Freedom of Information Act amendments on February
18 19th. In view of this subcommittee's interest in that Act,
19 as well as the Privacy Act, I thought you would be interested
20 in our experience under the law.

21 First, our experience under the Executive Order which
22 preceded it demonstrates CIA's effort to be as responsive as
23 possible while protecting intelligence sources and methods.
24 Of 362 requests from June 1972 through December 1974, 195 were
25 granted in full, 58 in part, and 62 denied. In some 47 cases,

10

1 the documents could not be released. The request
2 was withdrawn or was referred to another agency, et cetera,
3 Some 2,990 documents were released in this process.

4 In addition, during 1974 CIA reviewed and released over
5 500,000 pages of World War II Office of Strategic Services
6 records, plus films, maps, and card index files. Some 93 per-
7 cent of what was reviewed was released.

8 We have received several requests under the new Amend-
9 ments to the Freedom of Information Act, some 54 requests,
10 Madam Chairwoman. One requests records regarding "all expendi-
11 tures" of the Agency "from the date of inception" of CIA. The
12 requester asks for the "smallest transactional amounts" that
13 are recorded, along with all clarifying data available.

14 Another requester sent us five different letters dated
15 February 19, 1975. One attaches a listing of 44 matters on
16 which the requester wishes documents. One is for a list of
17 CIA's "ostensibly private, commercial, and funding operations."
18 Another asks for copies "of all damage assessments of leaks."
19 The requester refers to the unit established within the "CIA
20 Counterintelligence Office to look into the possibility of
21 foreign leaks (sic) to American dissident elements" -- we
22 assume the requester means "links" -- and requests all files
23 of this unit.

24 Another asks for "all CIA reports on the foreign aspects
25 of the anti-war, youth, and similar movements and their

1 Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1 of this re-
2 quester's letters asks for inter alia, "all material relating
3 or referring to. . . all domestic corporations or associations
4 owned or controlled or managed in whole or in part by the CIA
5 which have functioned at any time and in any capacity as cover
6 organizations for funds for any CIA intelligence or counter-
7 intelligence or surveillance or other covert activities in
8 the United States during the period 1950-1974."

9 Another specific request would cause CIA to search
10 through and review 900,000 files. All told, in this requester's
11 letter, there are at least 25 or 30 specific items out of a
12 total of 44 which ask for "all files of".

13 In each of the letters from this requester, he closes by
14 stating, "I will expect to receive a reply within 10 working
15 days." Obviously, it is impossible for us to locate and
16 identify the records requested within 10 days, much less con-
17 duct a serious review of such records to see what parts could
18 be released. Copies of these requests and our replies will be
19 submitted for your record.

20 We are endeavoring to be responsive to such portions of
21 these requests as are reasonable. However, the result is a
22 serious strain on the intelligence apparatus of this Govern-
23 ment. Indeed, a good-faith attempt to comply with the spirit
24 of the new Freedom of Information Act will have serious impact
25 on this agency, as well as the intelligence community.

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1 It is clear at this early date that one of the results of
2 the passage of the amendments to the Freedom of Information
3 Act will be to cause numerous suits in the Federal courts
4 simply because of the sheer inability of Government agencies
5 to comply with the provisions of the law.

6 Madam Chairwoman, I hope this description of CIA's actual
7 activities will indicate the basis for our request for special
8 consideration in the Privacy Act for the sensitive intelligence
9 sources and methods necessary to the operation of an intelli-
10 gence agency in our free society.

11 We in the intelligence community and at CIA have under-
12 taken the same commitment to support and defend the Constitu-
13 tion as have the other members of our Government. We intend to
14 carry out the laws of the United States and at the same time to
15 help maintain its security, the welfare of our citizens, and
16 peace in the world to the degree we can through our intelli-
17 gence operations.

18 In the Central Intelligence Agency, we stand second to
19 none in our recognition of the paramount rights of our citi-
20 zens, but we also believe that those rights must be protected
21 by an effective intelligence service in the world in which we
22 live. We consequently ask the opportunity to explain our
23 activities in an atmosphere of serious and responsible inquiry
24 into how to reconcile the activities of our open society and
25 the necessity that some of our secrets be respected if this
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1 society is to endure in the world of today and tomorrow.
2 This will be a major focus of the inquiries to be made by
3 the President's commission and the Select Committees, and I am
4 sure that in their findings there will be a vindication of the
5 contribution CIA and intelligence have made and a reaffirmation
6 of the need of the Agency for exemption of intelligence sources
7 and methods from the workings of the Privacy Act and the
8 Freedom of Information Act.

9 Thank you, Madam Chairwoman.

10 Ms. Abzug. Thank you, Mr. Colby.

11 Will you introduce the persons accompanying you?

12 Mr. Colby. Yes. This is Mr. Lyle L. Miller, our Deputy
13 Legislative Counsel, and Mr. Patrick L. Carpentier, our Assis-
14 tant Legislative Counsel.

15 Ms. Abzug. Of course, we share with you a recognition
16 that the world in which we live requires an effective intelli-
17 gence service. It is not the intention of the committee or of
18 the Privacy Act or the Freedom of Information Act in any way
19 to interfere with the legitimate intelligence activities of
20 the CIA or other Government agencies.

21 However, it is not yet clear to me what necessary pro-
22 tection the general exemption written into the Privacy Act
23 provides you which is not already covered by the exemptions
24 in section (k) (1) which, as you know, protects information
25 subject to (b) (1) of the Freedom of Information Act which, in

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1 turn, relates to "secret information" in the interest of
2 national defense or foreign policy.

3 In other words, that section of the Act gives you full
4 protection of any of your legitimate intelligence activities
5 because it provides that all matters which are in the interest
6 of national defense or foreign policy obviously are entitled
7 to protection. Therefore, why do you need an exemption in
8 addition to that protection? You have not stated that in the
9 course of your testimony.

10 Mr. Colby. Because, Madam Chairwoman, if the judge agrees
11 that all of our activities which we would say constitute
12 intelligence sources and methods, that they are included within
13 those two descriptions, then it would be all right. However,
14 we cannot be sure of that, and we are fearful that a number of
15 the quite legitimate activities in which we are engaged would
16 not be protected by that provision.

17 For example, we receive the assistance of a number of
18 American citizens in our work. We ask them to help us. They
19 do so under a pledge that we will keep their names confidential.
20 That is not involved with national defense, perhaps, because
21 it is too far away from the actual defense problem.

22 It is also probably not involved with foreign policy in
23 a direct sense, although it will be foreign intelligence infor-
24 mation. However, I could not say that the foreign policy would
25 be adversely affected if the name of an American who gave us
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1 that information came out. Let me say we would not be able to protect
2 him under those provisions.

3 Therefore, we do ask not necessarily for an agency
4 exemption of intelligence sources and methods.

5 Ms. Abzug. I will go into that a bit later, Mr. Colby.

6 On page 2 you indicate that requests by individuals for
7 access to information pertaining to them will be allowed if it
8 does not reveal sources or methods. I would like to know how
9 many requests were made.

10 Mr. Colby. We have had about 100 requests since this
11 article came out in the newspaper.

12 Ms. Abzug. How many have been approved in whole or in
13 part?

14 Mr. Colby. I do not believe we have those figures. We
15 have approved some; we have disapproved others because of the
16 revelation of intelligence sources and methods or because of
17 the revelation of other names of other individuals whose pri-
18 vacy would be affected.

19 Ms. Abzug. You have a record of those which have been
20 approved in whole or in part and those which have been denied?

21 Mr. Colby. We have records of that. I cannot give you
22 the specifics of it right here, Madam Chairwoman, but we are
23 following this. We are obviously getting quite a few such
24 requests.

25 Ms. Abzug. Would it be possible for you to supply us with

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1 an informational record of that?

2 Mr. Colby. I certainly will.

3 MS. Abzug. Please indicate for the record that the infor-
4 mation will be supplied by Mr. Colby.

5 (The information to be furnished follows:)

6 *The information was furnished*
7 *in afternoon session*
8 *See pg. 70*

1 Ms. Abzug. Mr. Colby, last night at about 6:00 o'clock
2 I received an envelope from you.

3 When it was revealed that you had been conducting and
4 maintaining files on persons who were active in the peace
5 movement, I wrote you a letter and suggested, sometime in
6 January, that all persons whose names and files were illegally
7 kept should be notified directly by you of this fact, that is,
8 that a file was so illegally kept, and that file should be
9 turned over to that individual so that that individual could
10 determine what to do with it -- to destroy it, to keep it, et
11 cetera.

12 I then suggested that if you did happen to have a file on
13 myself, who will be active in the peace movement in this
14 country for many years, both before I came to Congress and
15 since I have been in Congress, that I should like to have it.

16 I have not heard from you --

17 Mr. Steiger. I would like to have it.

18 Ms. Abzug. You will have it, I assure you, Mr. Steiger.

19 I had not heard from you until last night at 6:00 o'clock,
20 when I received this envelope.

21 Mr. Colby. I believe we replied to the first part of
22 your request earlier, Madam Chairwoman, ^{Said we} and we would reply to
23 your personal one a little later.

24 Ms. Abzug. In this envelope which I recieved from you

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last night, I got a file for what is alleged to be a number of

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1 references to me in documents maintained by the Agency, and
2 folders established in my name which contain certain of these
3 documents.

4 It is not a complete file, by your own statement here,
5 in that there are several documents and information which were
6 originated by other Government agencies, and information con-
7 cerning other individuals which were provided to me, and also
8 some information confidentially supplied by confidential
9 foreign sources.

10 However, I was quite interested and somewhat appalled to
11 discover that the CIA had been following my activities dating
12 back as far as 1953, when my activities were those of an
13 attorney.

14 The file contains information of my having represented
15 members of the entertainment field. There is an index refer-
16 ence as an attorney before the House Un-American Activities
17 Committee, and the file indicates that there was a serious
18 interference with the privacy of my clients by your opening my
19 private mail as an attorney, involving solely my representation
20 of clients in estate cases.

21 The file also reveals that my activities as a Member of
22 Congress concerning peace, which is a statement there had been
23 a press conference on the war in Vietnam, and a statement that
24 I made a speech with respect to the war in Vietnam.

25 It also contains a listing of places where my name appears
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1 in Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1 but meetings
2 of organizations, peace organizations, where my name was men-
3 tioned, indicating there was information that you had with
4 respect to these meetings.

5 I raise this not as a personal matter, but only reflective
6 of the problem we confront, and I would ask you how many files
7 of this character you maintain on other Members of Congress?

8 Mr. Colby. As I testified the other day, Ms. Abzug, there
9 were four such cases in this counter-intelligence operation.
10 There are references to other Congressmen in the past in other
11 files in our agency. They come in in perfectly natural ways
12 in many cases.

13 They come in through being named as references, by being
14 included in reports of other matters. Two Members of Congress
15 were employees of the CIA, so we have their names. A number of
16 Congressmen had clearances of various sorts to get access to
17 sensitive information before they became Congressmen. There
18 are a number of those.

19 I might clarify those cases for you, Ms. Abzug. The
20 letters you referred to were included in the material which I
21 reported to the Senate and House subcommittees, the intercept
22 of certain mail to and from a foreign country, a Communist
23 country. This was picked up in the course of that coverage.

24 This activity has been terminated since February of 1973
25 and it will not be resumed.

1 Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1, and I
2 believe one of the statements you made, was picked up in the
3 course of our coverage of a foreign institution abroad, the
4 fact that we were interested in that particular activity in
5 another country, and you happened to run into that particular
6 organization. In the course of following the activities of
7 that organization we picked up your name, and that was reported.

8 We picked up a lot of other information about that par-
9 ticular organization, I might add, and that was the focus of
10 our attention.

11 Ms. Abzug. In other words, you picked up my name in con-
12 nection with the fundamental exercise of the right of an organi-
13 zation to protest against a policy of Government, in other
14 words, Women Strike For Peace?

15 Mr. Colby. I am referring to the one abroad. The Women's
16 Strike For Peace item was a copy of a report received by us
17 which was unclassified, which was submitted by another agency
18 of the Government. That particular reference was received
19 in our agency as part of normal dissemination made by that other
20 agency of that type of information during that period.

21 It was noted, your name was noted on it, and it went into
22 the file which had existed on you for other reasons. That was
23 not an action of CIA, that particular report. It was not a CIA
24 report. I think we are referring to Tab "E".

25 Ms. Abzug. I just want to make it clear that I shall

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1 insert this file into the record in its entirety.

2 Mr. Colby. I marked it "Personal and Confidential" so
3 that would be your choice, Madam Chairwoman.

4 Ms. Abzug. It is my choice because it is reflective of
5 the kind of activity which has to be eliminated on the part of
6 the CIA, and it should not be a matter of your investigation,
7 and in my opinion it violates the Privacy Act and violates
8 some other freedoms.

9 As a matter of fact, I intend to discuss what exactly to
10 do with this particular matter with my colleagues and also
11 with attorneys.

12 Mr. Colby. I believe I indicated, Madam Chairwoman, that
13 I also believe a considerable amount of material in your file
14 should not be in there, but that certain of those matters, and
15 those are the parts that I am in the process of segregating
16 and hope to eliminate from the CIA's files, but there are
17 certain aspects in this file which are legitimately in this
18 file.

19 The fact that we cover an institution in a foreign country
20 working on a political program in that country, or even a
21 political program aimed at the United States ---

22 Ms. Abzug. What institution is that, may I ask?

23 Mr. Colby. I am referring to the Provisional Revolutionary
24 Government of South Vietnam. I believe it mentions there, in
25 the course of a CIA report which we received from overseas,

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1 your name. Your name is mentioned as visiting Paris, and
2 visiting that particular organization. We are interested in
3 the activities of that organization.

4 Ms. Abzug. Are you suggesting, Mr. Colby, that if a
5 Member of Congress -- as a matter of fact, there were two of
6 us from the Congress -- goes to Paris in the course of a very
7 important period and questions of determining policy in the
8 Congress with respect to Vietnam, and speaks with representa-
9 tives of South Vietnam and speaks with representatives of the
10 PRG, and speaks with neutralists in South Vietnam who are all
11 present in Paris, that is a matter which a Member of Congress
12 publicly expresses, there were press conferences on it, there
13 were public and open appearances, very clearly stated and
14 informational in the course of our Congressional activities,
15 that that is a matter that should go into the CIA file?

16 Mr. Colby. I am saying, Madam Chairwoman, it is perfectly
17 proper for CIA to follow the activities of that Vietnamese
18 organization, and that in the course of following that organi-
19 zation we incidentally acquired the fact that you had contact
20 with it. That report of the activities of that organization
21 were sent along to our headquarters.

22 We were not following you, Madam Chairwoman. You were not
23 the object of our operation.

24 Ms. Abzug. I see. May I ask you a question, then? I
25 would assume from your comment that, having recently returned
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1 with Mr. McCloskey and others from a fact-finding delegation
2 for the President and the Congress, that our contacts which we
3 made abroad with the South Vietnamese Government and the FRG
4 and a lot of other elements in the Vietnamese Government would
5 also, then, find themselves in my continuing file, assuming
6 there is a continuing file?

7 Mr. Colby. No, because there will not be a continuing
8 file.

9 Ms. Abzug. How come?

10 Mr. Colby. That is what I am taking steps to avoid.

11 Ms. Abzug. In other words, you now recognize that that was
12 an improper folder or an improper item in a file?

13 Mr. Colby. I think in some cases it quite logically and
14 properly fell within our obligation to report the facts of a
15 foreign activity, and if an American incidentally comes into
16 that perspective, then it is legitimate for us to report that
17 name.

18 Ms. Abzug. It was legitimate in 1972, but it is not
19 legitimate now?

20 Mr. Colby. It depends on what the contact is, Madam
21 Chairwoman. We have received information, when we were in
22 the course of covering a foreign institution abroad, we were
23 made aware of the fact that an unknown American was making
24 contact with that particular installation. We noted the arrange-
25 ments made for a very clandestine meeting between the people

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1 in the foreign mission and that American.

2 We reported that to the appropriate authorities. The
3 man was identified and he was later arrested by our Government
4 and convicted of selling our intelligence and our secrets to a
5 foreign power.

6 We found that American not by following him, but by our
7 attention to that other organization, and, incidentally, the
8 American name came into the activity. Having received the name,
9 we then forwarded it for an appropriate action.

10 At the time this material was collected, the Agency was
11 being asked to determine whether there was any foreign con-
12 nection or manipulation of the American anti-war movement. We
13 were endeavoring to find out whether that existed.

14 We determined to our satisfaction that it did not exist
15 in any substantial degree, but we did not know that when we
16 started the investigation.

17 As I say, Madam Chairwoman ---

18 Ms. Abzug. So that any person from America, including a
19 Member of Congress, who in any way had any contact with anybody
20 from the PRG was involved in your surveillance and your
21 activity; is that right?

22 Mr. Colby. We might or might not have picked them up,
23 depending on the degree of our surveillance --- not of the
24 American, but of the other foreign target.

25 Ms. Abzug. In other words, anybody who had any contact
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1 with the PRG or the NLR, I suppose it was, anyone at all, it
2 was immediately recorded in your file and then you conducted
3 various surveillance activities over that person?

4 Mr. Colby. No, we did not conduct surveillance activities
5 over that person. We were conducting surveillance activities
6 over a foreign organization, and incidentally we picked up the
7 fact that that foreign organization had contacts with certain
8 Americans.

9 Ms. Abzug. Can you tell me how the CIA obtained the
10 minutes of a private meeting by a leading peace group consisting
11 solely of Americans engaged in domestic activities? I think
12 that is in (c).

13 Mr. Colby. As I said, with respect to (c), that is a
14 report which was circulated to a number of Government agencies
15 by another Government agency. It was marked "Unclassified,"
16 and consequently it was included in this collection of any
17 material referring to you which we did not have a reason to
18 hold back.

19 Inasmuch as it was unclassified, we felt obliged to provide
20 it to you in response to your request. It was not a CIA opera-
21 tion. It was not a CIA report. It was a report received from
22 another agency. Inasmuch as it was unclassified, we provided
23 it to you.

24 Ms. Abzug. How do you get this other item here, a list of
25 the Sixth National Conference of the Women's Strike For Peace,

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1 December 21-23, 1967? How did you get it and how is this list,
2 which contains the names of American women engaged in a legiti-
3 mate exercise of their democratic rights, obtained by the CIA,
4 and what has happened to those names?

5 Mr. Colby. Newspaper articles, publications and circulars.
6 These were public documents.

7 Ms. Abzug. That was not a public document.

8 Mr. Colby. I believe it was, Madam Chairwoman.

9 Ms. Abzug. An attendance list of a conference?

10 Mr. Colby. It was a public document which appears in a
11 conference.

12 Ms. Abzug. How did you get it?

13 Mr. Colby. I do not know at the moment.

14 Ms. Abzug. Did you have somebody in that organization?

15 Mr. Colby. I do not know. Right now I do not know how we
16 got it.

17 Ms. Abzug. Do you plan to continue to maintain folders
18 on my activities?

19 Mr. Colby. No, Madam Chairwoman, I do not.

20 Mr. Steiger. It has nothing to do with national security,
21 referring to the decision?

22 Mr. Colby. No.

23 Mr. Steiger. As soon as you are through, other members
24 have questions.

25 Ms. Abzug. I do want the other members to participate.
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1 I will come back to you, Mr. Colby.

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2 Mr. Colby. I am sure you will, Madam Chairwoman.

3 Ms. Abzug. This was just a preliminary period of question-
4 ing. The Republican ranking member is anxious to say something.
5 I will be happy to yield to him at this time.

6 Mr. Steiger. Thank you, Madam Chairwoman.

7 Mr. Colby, in my opinion, your integrity and your wisdom
8 has never been in question. However, your presence here this
9 morning demonstrates either remarkable courage or lack of under-
10 standing of the make-up of this committee.

11 Mr. Colby, I am particularly interested in the items you
12 cite in which you list a number of requests you have had for
13 specific information. I am sorry that I do not have that page
14 of your report handy.

15 Mr. Colby. Pages 18 and 19.

16 Mr. Steiger. You here recite a few requests which would
17 have required obviously a great number of man hours in order to
18 respond to them. Would these requests be ameliorated if the
19 requests are granted? Would you be able to exercise the kind
20 of judgment which some of us think you should be able to exer-
21 cise? Would that be affected, or would it be just another prob-
22 lem?

23 Mr. Colby. These requests are under the Freedom of Infor-
24 mation Act. We can exercise a judgment that certain things are
25 protected as intelligence sources and methods. That decision,

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1 however, is subject to challenge through an appeals system and
2 in the courts. I believe we will be so challenged.

3 Mr. Steiger. My concern, Mr. Colby, and I am not in your
4 business, but it would seem to me that if somebody really wished
5 to do harm to your agency, it would be a simple thing to mount
6 a campaign of inquiry under the Freedom of Information Act,
7 thereby either tying up the agency in responding, or tying it
8 up in litigation. Is that a ---

9 Mr. Colby. That is a real concern I have, Mr. Steiger.

10 Mr. Steiger. What is the answer to that one, then?

11 Mr. Colby. The answer to that is that if we had in the
12 Freedom of Information Act a position that we could claim exemp-
13 tion of intelligence sources and methods and be subject to an
14 appeals procedure but not be subject to an independent finding
15 by the courts as to whether that matter should be de novo classi-
16 fied or not, I think we would be able to live with it.

17 Mr. Steiger. How about a volumetric exemption, somebody
18 who requests all the expenditures of the CIA from the time of
19 its inception, for example? I don't see any way you could fail
20 to respond to that under the source exemption you cite.

21 Is there any way we can inject reason and logic into this?
22 That is what I am getting at.

23 Mr. Colby. There is one case in the court, Mr. Steiger,
24 which indicates the possibility of the court determining that
25 the request is unduly burdensome. It is a case named the Irons

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1 case. It is Irons vs. Schuyler.

2 This particular case does state that the description must
3 be adequate, but there is some language in that particular case
4 which indicates some hope, because that case involved a request
5 for "all unpublished manuscript decisions of the Patent Office."
6 That description enabled the documents to be identified, but by
7 searching through well over 3-1/2 million files built up over
8 a century, the court held the request was not one for identifi-
9 able records within the meaning of the Act.

10 That is ^{in the} District Court at the moment.

11 Mr. Steiger. A pretty weak reed.

12 Mr. Colby. That is right. We will have to use that par-
13 ticular approach on some of these totally unreasonable requests.

14 Mr. Steiger. In other words, you have not come to us with
15 specific suggestions to obviate this problem. It is not really
16 a problem yet of such enormity that it could do harm to the
17 function of the CIA?

18 Mr. Colby. Not yet, I would say. We have some 50-odd
19 requests under the Freedom of Information Act thus far in the
20 two weeks or so it has been in effect.

21 Mr. Steiger. Fifty-odd is an editorial reference numeric-
22 ally, I assume.

23 Mr. Colby. Yes. A few may be odd, but I believe it is 54.
24 I think as we gain some experience with the requests and the
25 nature of the requests, we will perhaps have a better case to
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1 come back and request some relief of this committee.

2 Mr. Steiger. I know you will obviously be spending a lot
3 of time on the Hill in our lust for truth and virtue and a
4 little attention. I think you will be shuttling back and forth
5 among many committees. That concerns me, very frankly.

6 Mr. Colby. It concerns me.

7 Mr. Steiger. I missed the introduction of these two
8 gentlemen, but I assume --

9 Ms. Abzug. Lyle Miller and Patrick Carpentier.

10 Mr. Colby. Deputy and Assistant Legislative Counsels
11 respectively.

12 Mr. Steiger. It is not only your appearance, because I am
13 familiar with some of the machinations ---

14 Mr. Colby. I am spending a high percentage of my time on
15 these matters, rather than on intelligence business.

16 Mr. Steiger. In the past, how many Directors have been
17 involved? Is it fair to say that you either have already or
18 certainly will in the next 90 days have spent more time on the
19 Hill than any other previous Director?

20 Mr. Colby. Obviously, some of the previous Directors
21 served six to eight years. In that time, they might, in Execu-
22 tive Sessions with various subcommittees, have built up time.
23 However, it is totally out of proportion to any previous
24 Director in terms of the rate of appearance.

25 Mr. Steiger. My question is, and it cannot be responded
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1 to objectively, and it perhaps should not be because it should
2 be subjective, but how effective can your leadership of the
3 organization be if you are to be spending this time up here?

4 Mr. Colby. The organization is under serious attack, Mr.
5 Steiger. I think it is important that I lead the defense of
6 the organization in that respect.

7 Mr. Steiger. It would be a shame if, in the process of
8 defending the organization, it is forced to remain relatively
9 static.

10 Mr. Colby. I think the organization is such a good one,
11 quite frankly, and the talent level is so high, that its normal
12 day's workings are handled very, very well. I have the highest
13 opinion of the work of the organization as a whole.

14 Mr. Steiger. In the event that this exemption is not
15 granted, the exemption you have requested, is there any other
16 agency which could perform the task which I gather you would
17 either be limited in without the exemption or perhaps barred
18 from engaging in -- is there any other agency, such as an arm
19 of the State Department or any other entity, which could perform
20 the function for which you want the exemption?

21 Mr. Colby. No, I don't believe so, Mr. Steiger. I am
22 talking about intelligence sources and methods. That is a cate-
23 gory which refers to an activity of the CIA alone. I think the
24 question of the organization of the community may be studied
25 by the Select Committees, but at the moment there is no doubt

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1 about it, that the CIA would have to respond to this kind of
2 request under the present law unless it had an exemption.

3 Mr. Steiger. Absent this exemption, will you be able to
4 continue in a more limited fashion, or will you have to elimi-
5 nate that whole phase, the clandestine source simply having to
6 be eliminated from your weaponry?

7 Mr. Colby. We are very concerned about a number of our
8 clandestine sources. I have had messages from individuals who
9 serve us at the risk of their lives. I have such a message on
10 my desk right now which expresses great concern. He says he
11 is a great believer in democracy, which is why he works with us,
12 but he is deeply concerned that these investigations are going
13 to reveal his name.

14 I have to assure him, and I will assure him, that they will
15 not reveal his name. Both under the statute and as a profes-
16 sional, I owe him that obligation.

17 Mr. Steiger. Thank you, Madam Chairwoman.

18 Mr. Harrington. I defer my questioning for the moment to
19 Representative McCloskey. I am supposed to be at the White
20 House shortly to discuss the trip recently made.

21 Mr. McCloskey. What is the relationship of the National
22 Security Agency and the CIA? Does any exemption extended to
23 the CIA include the National Security Agency?

24 Mr. Colby. No, it would not include it directly. The
25 National Security Agency's exemption would fall under the
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1 ~~Foreign Policy and National Security~~ Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1 an element of
2 the Department of Defense, then I think it is more easily found
3 under the national defense exemption.

4 Mr. McCloskey. Thank you. I have nothing further.

5 Mr. Harrington. Mr. Colby, a number of things come to mind.
6 I will ask a couple specific questions, if I can, and then get
7 back to the interesting exchange between yourself and Congress-
8 man Steiger, which might be useful in perspective.

9 You made a reference indicating that in August of 1974,
10 and I believe in March of 1974, certain limits were imposed
11 internally on the agency with respect to both the scope of
12 domestic activities conducted and the activities on a foreign
13 basis involving counter-intelligence activities of the CIA with
14 respect to American nationals.

15 Mr. Colby. August of 1973, and March 1974.

16 Mr. Harrington. 1973, yes. Is it something we can expect
17 you might do, to make public beyond your own expressed determi-
18 nation, specifically to Congresswoman Abzug, a cessation of this
19 kind of activity and to have those internal guidelines made
20 known generally to the public and to Congress, which might
21 apprise us as to the scope of them, to see whether or not they
22 are generally in keeping with the concerns which prompted your
23 coming here this morning?

24 Mr. Colby. These guidelines have been made available to
25 the President's commission. They have not yet been made availab

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1 to the Congress.

2 Mr. Harrington. Are you willing to make them available?

3 Mr. Colby. I certainly plan to make them available to
4 the Select Committees which will look into our affairs. There
5 is no question about that. They will have access to those
6 directives.

7 Mr. Harrington. You made that clear to Congressman Nedzi
8 and Senator Church?

9 Mr. Colby. I have not specifically discussed it, but that
10 is my intention, to make that kind of material available.

11 Mr. Harrington. Would that be something that, in view of
12 our often-expressed interest in broadening the appreciation
13 for the role of the agency, given the jurisdiction this committee
14 has and the Judiciary Committee has, and other committees of
15 like identification have with the problem, that you would make
16 that information available as appropriate guidelines to those
17 committees, also?

18 Mr. Colby. I did read off, on page 15, essentially those
19 which apply to this category, yes. Obviously it is quoted
20 language in great part.

21 Mr. Harrington. I am asking whether or not the materials
22 provided the Rockefeller Commission and those you expressed,
23 making available to the Select Committees, would be available
24 in the same form to other committees of Congress and to the
25 public?

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1 Mr. Colby. I have long taken the position that our over-
2 sight committees have access to our most intimate detail. With
3 respect to the other committees of the Congress, I have taken
4 the position, which I believe represents the precedent of the
5 Congress, that our operational activities are not discussed
6 in that forum; that the substance of our intelligence is given
7 to those committees in this situation.

8 Since this matter can be discussed on an unclassified basis
9 I am here talking about that. However, I believe any detailed
10 examination of our activities would have to be conducted on an
11 Executive Session basis, and by the oversight committees charged
12 by the House and Senate to do this.

13 Mr. Harrington. I was not suggesting, and I do not want
14 to take up more time in this area, that you involve a detailed
15 examination of your activities, but you rather involve your own
16 self-determination to avoid practices which have been the sub-
17 ject of concern and the method by which the agency chose inter-
18 nally to arrive at it. I do not think that would entail knowl-
19 edge of potentially sensitive information.

20 Mr. Colby. Certain of it would, frankly. Certain of the
21 directives are very sensitive.

22 Mr. Harrington. Let me go to what was intriguing to me
23 in your exchange with Congressman Steiger, who made a couple
24 observations.

25 I have a memo from the Office of
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1 the Director of the CIA being characterized, at least during
2 the Christmas season of this year, as an often-expressed desire
3 to make certain that there was a broader degree of appreciation
4 and understanding of the role the agency played, and citing
5 often not only your willingness but expectation that you could
6 be called on to use any forum available, to have some heightened
7 appreciation for the agency and its role, and it was not a bur-
8 den but, in your opinion, a necessity and a desirable goal of
9 the agency.

10 Is that a fair characterization of what --

11 Mr. Colby. I did not stop in December, Mr. Harrington.

12 Mr. Harrington. I note with interest, my own theory being
13 that you are here this morning largely because of your being
14 Director, and your participation in the illusion of oversight,
15 not performing the function you regularly cite as one which
16 is, by inference, done properly --

17 Mr. Colby. I was asked to come before the committee. We
18 have an interest in this exemption. Therefore, I am here.

19 Mr. Harrington. Perhaps if I finish the question you can
20 respond to it.

21 My concern really, when we have that kind of exchange
22 which has just gone on, and I have a number of other references
23 you made as to where you feel your mandate lies, having read
24 on a first-hand basis material that was given to the House
25 Oversight Committee of Lucien Nedzi last April 22, and having

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1 read the reaction of the ostensible overseer on the Senate
2 side, Chairman Stennis, to the role the agency played in Chile,
3 that what you were imparting, contrary to the popular impres-
4 sion often sought to be left by overseers and by those who are
5 being overseen, was forgiven on a first-time basis to these
6 people who supposedly are intimately involved, to use your
7 language, with the operational details of the agency.

8 I cannot help but feel that part of the problem which has
9 been so solicitously dealt with this morning in the course of
10 the more recent questioning is the result of your own contri-
11 bution toward that illusion.

12 I have often said to Chairman Nedzi, and said on various
13 occasions to you, that if I am in error in suggesting that
14 that primary source of information which I cite was information
15 which in any way had been given in that specificity to the
16 Oversight Committee before, I would be perfectly willing to
17 draw back from this observation of mine that there is more an
18 illusion of that than there is actual detail given, and that
19 absent specific requests, in general the practice of your agency
20 has been to avoid imparting to the Oversight Committees this
21 information.

22 While I appreciate the concern of taking your time, a lot
23 of this could have been accomplished in a more forthright
24 fashion if you dealt with the committees supposedly entrusted
25 by Congress with that.

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1 Mr. Colby. Is that a question?

2 Mr. Harrington. Whatever you would like to make it. If
3 you would like to respond to the question or statement, you may.

4 Mr. Colby. I would appreciate a chance to respond to it.

5 I think, Mr. Harrington, that our record is to be respon-
6 sive to what the Congress has requested and wants.

7 In the early days of the CIA, in the early 1950's, there
8 was a general thesis that intelligence had better not be thought
9 about, looked into, nor talked about. There was, consequently,
10 a deliberate move by the Congress to give us the most general
11 of instruction in the National Security Act, and to set up our
12 oversight on the most restricted possible basis. There was a
13 very limited look at the details of our activities.

14 Obviously, that is changing, and it is changing today
15 very rapidly. The CIA is responding to that desire of the Con-
16 gress to change in any way that the Congress wants to set it up.

17 We have over the years, with respect to the material that
18 you read and which, unfortunately, came into the public domain,
19 reported a number of those individual items to various commit-
20 tees or chairmen of committees in the past. It may not have
21 been reported to the individuals who were attending the session
22 of the testimony that you read, but I might also, if I may,
23 point out that I am afraid your memory was not all that good in
24 that particular hearing and in that particular reading because
25 you apparently attributed to me a word called "destabilization",
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1 which I never used and which now has become a worldwide word
2 attributed to the CIA. I regret this very much.

3 Mr. McCloskey. If the gentleman will yield for a moment,
4 I just want to advise the gentleman and the committee that in
5 this recent trip to Vietnam and Cambodia, we had absolute
6 cooperation of the agency. I think there has been a material
7 change in the last few months under Mr. Colby's direction. He
8 has been perfectly candid in dealing with members of the com-
9 mittee.

10 This is my observation after four trips to Vietnam. This
11 was really the first occasion where we had absolute and com-
12 plete cooperation. I am satisfied with this.

13 Mr. Harrington. I would like to modify Mr. Colby's state-
14 ment with reference to the attitude prevalent in Congress in
15 the early 1950's and suggest that attitude appears to have
16 been a cozy relationship until sometime in the mid to latter
17 part of 1974.

18 While I would appreciate your interest and self-serving
19 statements with regard to the apparent concern the country had
20 with regard to policy dangers, this is in the context of the
21 Nixon-Kissinger era.

22 I have vindicated you personally and publicly. My memory
23 is somewhat limited as to the conditions which existed in the
24 Armed Services Committee. I would perfectly welcome any cor-
25 rection. Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1

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1 part of the Congress and the American public on the nature of
2 that testimony, which is in direct variance with the testimony
3 under oath, and on occasion without oath, on the part of a
4 number of people representing the Executive Branch of Government
5 before bodies on which I have sat.

6 I would be as concerned in general about the veracity
7 of their memories as to events as I might be with regard to my
8 misuse of words.

9 I have one other question, and I will not preempt any
10 further time, a question of your own definition, if you could,
11 since we have some press clippings which appear to indicate
12 some apparent dichotomy of definition between yourself and
13 the former Director, Mr. Helms, on the question of your scope
14 and role on the domestic side of the intelligence field, includ-
15 ing testimony given by you at your confirmation hearing, indi-
16 cating some self-imposed limits as to what you might do with
17 information once it was available.

18 I can quote from it if you wish, but I think you are
19 familiar in general with the tenor of my question.

20 Can you comment again in general as to how you define your
21 role? I have often seen it referred to, starting in mid-
22 December and thereafter, with regard to the rationale imposed
23 by this activity.

24 Mr. Colby. Various Directors other than Mr. Helms, various
25 Directors in the past, have referred to a gray area in the CIA
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1 legislation. This gray area particularly is the Director's
2 responsibility for the protection of intelligence sources and
3 methods.

4 It was under that belief, to protect intelligence sources
5 and methods from some exposure or threat, that a number of
6 actions may have been taken in the past which appear question-
7 able to me.

8 In my confirmation hearing a year and a half ago, I said
9 that I did not see a gray area. I said that the protection of
10 intelligence sources and methods, that charge upon me, gives
11 me a duty to do something, but it does not give me authority
12 beyond that given me by the rest of the Act, and that if I have
13 a problem which involves the protection of intelligence sources
14 and methods, I should go to the appropriate agencies or organi-
15 zations and ask for assistance in that regard, but not go out-
16 side my own organization in order to do anything about it.

17 Mr. Harrington. I assume the internal memoranda we dis-
18 cussed earlier discusses that?

19 Mr. Colby. Yes, it does.

20 Mr. Harrington. Thank you.

21 Ms. Abzug. Mr. Ryan?

22 Mr. Ryan. I am concerned about one area, Mr. Colby,
23 which I think bears on this as the reason and rationale for
24 this particular committee hearing. I think I am sufficiently
25 understanding of the nature of the conflict which exists and the
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reason you and I are here.

On the one hand, it is necessary for any modern nation to do more than to follow Mr. Simpson's famous comment about gentlemen not opening each other's mail. There may be nations hostile to us at a given time and we must have certain information, and to understand the nature of that hostility, where it comes from and what it consists of, and the development of it.

On the other hand, this is a Nation composed of free people who will not tolerate the gumshoe activities we have heard about in the past by domestic agencies, or United States agencies, moving into the rights of American citizens to pursue their own ideas and beliefs even if they be hostile to the establishment itself.

In the last year and a half or so, perhaps two years, we have noticed as a people, I suppose, the spectacle of an American President using the words "national security" to cover activities which turn out to be the kind which led to a long jail term for those involved, thereby debasing, among other things, a plea for national security, which I think is a very destructive kind of use of the word.

The intent became too broad. The cover became too broad. As a consequence, we now find other agencies, such as your agency, being questioned, and I believe for legitimate reason.

I notice in your testimony here this morning that you

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1 refer to matters which you think require some judgment on your
2 part. You have heard of legitimate activities, for example,
3 in talking with the chairwoman. You refer to the belief that
4 effective intelligence information should be produced in the
5 world in which we live.

6 In this there is the implication that it is the agency
7 itself which will make the determination as to how far it goes.

8 It has been my experience in the past that agencies,
9 bureaus, those who are within, tend to become over-enthusiastic
10 about their rationale for moving ahead into areas which become
11 completely sensitive. You want some kind of limitation under
12 this Privacy Act.

13 What kind of check can you have against yourself and
14 against those over-enthusiastic members of your agency who go
15 too far?

16 Mr. Colby. Mr. Ryan, I agree with the need for oversight
17 of anyone in our Government. I think it is perfectly proper,
18 and I agree with you that if we are not accountable it is a
19 danger to our constitutional structure. CIA has certain over-
20 sight now.

21 Mr. Harrington has been a little critical of the degree
22 of it in the past. I think we will get a lot of it in the future.

23 I think we have the President's Intelligence Advisory
24 Board which has looked over our activities from time to time
25 and made recommendations about it.

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2 programs and activities. We have an Inspector General in our
3 own organization who is charged with keeping us in the proper
4 area and to look into activities in the agency.

5 I believe that out of the work of the Select Committees
6 there may come some changes, some greater definition in our
7 legislation along the lines, for example, of the one which
8 has been considered and discussed and actually submitted in a
9 bill which would add the word "foreign" to the word "intelli-
10 gence" wherever it appears in the CIA Act, so that it makes very
11 clear that the function of the CIA is abroad and in the foreign
12 intelligence field, but not domestic.

13 Mr. Ryan. If I may interrupt, I disagree with that amend-
14 ment because it still requires a subjective interpretation.
15 It still occurs within the agency itself. Who decides what is
16 foreign?

17 If I get a passport or get some kind of invitation minus
18 a passport to visit North Vietnam, which is presently proscribed
19 by the State Department, does that put the CIA on my trail?

20 Mr. Colby. It does not put the CIA on your trail.

21 Mr. Ryan. In connection with a foreign government to
22 which we are presently hostile, does that raise questions in the
23 minds of the CIA? Does it come within that new word you men-
24 tioned?

25 Mr. Colby. I think if you want to North Vietnam or if you

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1 were in contact with a North Vietnamese organization someplace,
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2 and we were following the activities of that group in that
3 country, and your name incidentally came in, it would probably
4 be reported as part of foreign intelligence.

5 I think we are distinguishing two things, Mr. Ryan. One
6 is the clarification of our proper area of work, and the second
7 is the supervision and policing to make sure that we stay
8 within it. I think both will be the subject of considerable
9 discussion by the Select Committees.

10 Mr. Ryan. Let me carry it further than that. Would you
11 support any effort by the Congress to take some jurisdiction
12 over decisions of that kind which are sensitive out of your
13 agency, making it participate with the Judiciary or Legislative
14 branch?

15 We had an amendment offered last year requiring the CIA
16 to consult with the Foreign Affairs Committee on matters relat-
17 ing to covert operations before they take place. I think that
18 is a step in the right direction. However, beyond that, if we
19 get to the point where we begin to take surveillance of Americans
20 citizens in any fashion, would there be support for you in
21 obtaining some kind of language which might follow the precedent
22 having to do with search and seizure in this country, where a
23 warrant is required to be issued by a judge, bringing the
24 Judiciary into it, a different branch of Government other than
25 the Executive branch?

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1 I would ask
2 apply here as to how much detail and how much supervision is
3 possible and still do our work.

4 One of the concerns we have is with the sensitivity of
5 some of these matters. As you spread them further and further,
6 you take more risks with the sensitive details thereof. How-
7 ever, I have recommended, for example, that we improve our
8 legislation which will enable us to keep secrets, but I have
9 also said that should be accompanied by some manner of insuring
10 judicial review of the reasonableness of that decision; that
11 that matter has to be secret before we can prosecute under that
12 rule.

13 I do believe that we must not be independent in these
14 decisions; that there must be a way of supervising. But I do
15 ask for some reasonable recognition of the delicacy and sensi-
16 tivity of the matter so that it becomes a problem of how we
17 work it out and not whether.

18 Mr. Ryan. If you make that request, Mr. Colby, I say
19 this plainly to you, and straight to you right now, you realize
20 you are jeopardizing the existence of that agency. The American
21 people of this country have to have a choice between being
22 followed, between being victims of the kind of covert activi-
23 ties which have taken place in the past, without regard to a
24 particular agency -- I am not picking at just the CIA, but the
25 FBI and the rest -- but if the choice must be between

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1 maintaining the privacy of the individual in this country or
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2 maintaining the operation of the CIA in gathering of intelli-
3 gence secrets, I can tell you right now that the operation that
4 will be gotten rid of will be the CIA, unless you are willing
5 to bend enough and recognize the fact that there will be for
6 certain in the future those within the CIA, within the FBI and
7 other agencies, NSA and so on, who will misuse the authority
8 they have and begin to impinge upon the rights of American
9 citizens where there is clearly no reason to do so, where the
10 American citizen himself has the right to pursue his own inter-
11 est, a broad range of political spectrum and activity.

12 If we cannot have some kind of recognition of that in
13 amending this law, then the thing which will have to give will
14 be your authority and your agency, which I would regret, but
15 not as much as I would regret the loss of freedom of American
16 citizens.

17 Mr. Colby. Mr. Ryan, I said in my statement that we in
18 the agency fully accept, even insist upon, the paramount right
19 of the citizen in our society and under our Constitution.

20 I am saying there is a problem of how we reconcile that
21 absolute requirement with an equal requirement to protect our
22 country and the free society in which we live, and whether there
23 is some way that can be worked out. I have bent a lot on this
24 matter, and I propose to work out some reasonable way of solving
25 these kinds of problems.

2 have any willingness to allow, within prescribed limitations,
3 members of either the Legislative or Judicial branch to par-
4 ticipate with you in a judgment regarding the manner and the
5 direction and the extent to which you involve yourself in activi-
6 ties relating to American citizens.

7 Mr. Colby. Mr. Ryan, I am prepared right now to brief and
8 detail to your Appropriations Committees, and I do every year,
9 the specific amounts we use for the different activities. I
10 would have absolutely no hesitation in sharing fully with those
11 committees the details of our activities of that nature.

12 If they determine that certain elements were not proper,
13 they would have every right to proscribe that from our activi-
14 ties. I would share it in that respect, and I do.

15 The question as to the degree of detail we get into I
16 think we can work out, but I am pretty sure there can be a
17 reasonable reconciliation of the paramount right of our citizens
18 and the need of the Nation for an intelligence service. I agree
19 with you that the Nation is going to sacrifice where it becomes
20 a question of the paramount right of the citizen. There is no
21 question about that under our Constitution.

22 But I think we can solve both interests to a great degree
23 by a sensible approach toward it.

24 Mr. Ryan. Would you say from your experience, since you
25 have been Director of this agency, that there has been a positive

1 effort made in the past to inform Members of the Congress,
2 both Houses, of your activities to the extent that you believe
3 was your responsibility and that the Congress itself approved
4 of these activities which we now know about?

5 Mr. Colby. Mr. Ryan, I took up with several Members of
6 the Congress the results of our review of questionable activi-
7 ties. I didn't discuss whether we should continue those. I
8 just assured them they would not be continued.

9 In that sense, I disclosed them to a very small number,
10 granted, but I did not --

11 Mr. Ryan. To what committees did you expose them?

12 Mr. Colby. To the chairmen of the House and Senate Armed
13 Services Committees, or the chairman of the subcommittee in
14 one case.

15 Mr. Ryan. I think this gets into the whole problem Con-
16 gress must face, which is more responsible than you for the
17 particular attitude of those two gentlemen whose attitude I
18 do not share with regard to the secrecy, privacy, and respect
19 for individual rights of the American citizen.

20 Mr. Colby. I assure you that they shared that same right,
21 because they agreed that those activities should not be con-
22 tinued. That was the whole point of the discussion; that
23 these sorts of things would be changed.

24 Mr. Ryan. This was prior to the public concern expressed
25 over CIA operations?

1 Mr. Colby. Yes.
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2 Mr. Ryan. When was this?

3 Mr. Colby. In May of 1973.

4 Mr. Ryan. And the chairmen of those two committees
5 expressed concern over the individual rights of the citizens
6 and the fact these might be illegal activities?

7 Mr. Colby. Yes.

8 Mr. Ryan. In private?

9 Mr. Colby. After I briefed them. I said I had doubts
10 about them, and I was going to change them. They agreed.

11 Mr. Ryan. What actions and what kinds of preparations
12 have you made in a long-range sense, looking at the future, to
13 comply with the actions or the action taken through my amend-
14 ment to bring the Foreign Affairs Committee into the kind of
15 regular briefing which you have given in the past to the Armed
16 Services Committee?

17 Mr. Colby. With respect to the Foreign Affairs Committee
18 of both the Senate and House, I have called upon the chairmen
19 thereof. I have actually briefed a subcommittee of the Senate,
20 the chairman and ranking minority member, and they have taken
21 upon themselves the obligation of informing the other members.

22 I have been in contact with the chairman of the Foreign
23 Affairs Committee of the House, and I understand this committee
24 was just reorganized and appointed the other day. I have indi-
25 cated my availability at their convenience, at the soonest

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1 ~~Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1~~ give them a hearing on matters we are now
2 involved in.

3 Mr. Ryan. Do you believe, in connection with the sug-
4 gested changes of this privacy section in the Act, that these
5 actions taken so far are enough, or do you believe further
6 activity is necessary to bring this matter to some kind of
7 rational conclusion to the satisfaction of all?

8 Mr. Colby. With respect to the Privacy Act, obviously
9 it is not effective yet. I am concerned about the chairwoman's
10 suggestion that she would like to remove our exemption. If
11 that were done, it would give me considerable trouble unless
12 it were replaced by an exemption of intelligence sources and
13 methods.

14 I do not insist upon an agency exemption, but I would like
15 to have some recognition of the sensitivity of intelligence
16 sources and methods.

17 Mr. Ryan. Thank you.

18 Ms. Abzug. Mr. Colby, are you prepared to turn over to an
19 individual the person's original files so he or she may destroy
20 them if the information gathered is beyond the legally pre-
21 scribed activities of the CIA?

22 Mr. Colby. I am prepared to turn over to the individual
23 any material we have on that individual which does not reveal
24 intelligence sources and methods.

25 Some of the material we obviously get from very sensitive

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1 sources. Some such material was involved in your file.

2 Ms. Abzug. What do you mean, some such material was
3 involved in my file? Are you suggesting my file revealed any-
4 thing concerning my activity that was improper?

5 Mr. Colby. No, I am not. I am saying if I gave you
6 certain of the material --

7 Ms. Abzug. Then it must have invaded my privacy, did it
8 not?

9 Mr. Colby. I do not think it necessarily invaded your
10 privacy. I think it was collected incidentally in our coverage
11 of some foreign subject.

12 Ms. Abzug. You agree it did not reveal any improper
13 activity on my part?

14 Mr. Colby. It did not.

15 Ms. Abzug. Therefore, it must have violated my personal
16 rights under the Constitution.

17 Mr. Colby. No, I do not agree with that.

18 Ms. Abzug. Is it not so that this file reveals coverage
19 of my correspondence as a lawyer in a lawyer-client relation-
20 ship which was perfectly legitimate?

21 Mr. Colby. It does.

22 Ms. Abzug. How in heaven's name can that not be considered
23 improper activity on the part of the CIA? We are dealing with
24 the Privacy Act. We are giving you an exemption under this
25 Privacy Act which exempts all matters of national security.

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2 At the same time, we are saying what we deal with is the
3 same thing you wish to deal with, namely, how do we reconcile
4 the public interest and rights of the individuals? Once we
5 cave in in this society on the rights of the individual, then
6 we have caved in in this society, and we are finally, at long
7 last, coming to grips with this.

8 I have seriously devoted myself to this subject, and the
9 question of the preparation of our legislation which was passed
10 last year.

11 I ask you, how can you continue this? You have not indi-
12 cated you will notify each of the individuals on whom you have
13 files which contain similar information which is private to
14 that individual or in the exercise of the rights of a citizen.

15 Mr. Colby. I have indicated --

16 Ms. Abzug. What would you do about clearing that up?

17 Mr. Colby. I indicated that we have terminated the inter-
18 ception of mail, which I did report and from which program your
19 letters came. We terminated that in February of 1973 and it
20 will not be resumed.

21 I have said with respect to other kinds of information which
22 are collected, if they are collected incidentally to our foreign
23 intelligence mission, then they will probably continue to appear
24 but they will not be the subject of particular attention. We
25 will comply with the rules of the Privacy Act to the degree
26 that we can and still protect the intelligence sources and

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2 methods, as the Conference Committee requested us to do in the
3 conference report before the Act was passed.

4 Ms. Abzug. I want to note the presence of our venerable
5 and estimable chairman, Mr. Brooks.

6 I wonder whether the chairman, Mr. Brooks, would like to
7 ask any questions. I am rushing against time because I was
8 due at the White House.

9 The Chairman. I want to commend you on your effort to
10 see that the Privacy Act protects all the people in this country
11 and not just a few.

12 Ms. Abzug. Thank you.

13 Mr. Colby. If I may add something to that, the conclusion
14 that CIA arrived at after its investigations into the possible
15 existence of foreign links to American domestic activity was
16 that there was no substantial foreign manipulation or assistance
17 to the anti-war movement.

18 Ms. Abzug. I understand that.

19 Mr. Colby. That came from study of the facts, of all of
20 the facts.

21 Ms. Abzug. When did you determine that?

22 Mr. Colby. At a series of different reports submitted to
23 our Government during the period about 1970 to 1973, 1972 or
24 1973.

25 Mr. Steiger. Would there have been any way you could have
arrived at the same conclusion without the investigation?

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1 Mr. Colby. I do not think so. I think we had to make
2 that investigation in order to know whether that existed or not

3 Ms. Abzug. Is it the gentleman's testimony -- I want to
4 be sure I understand him -- that at this time the CIA is not
5 engaging in the kind of collection of information and notations
6 and planting of individuals for information, sources, and so on,
7 which previously have been recorded and revealed by you with
8 respect to the peace movement?

9 Mr. Colby. Yes.

10 Ms. Abzug. In other words, it is not likely that anybody
11 would find in a file the fact that a Congresswoman appeared
12 before a legitimate peace group which was calling on Congress
13 for a definite date for the U.S. to withdraw from Southeast
14 Asia, that I found in my file information that I told this
15 group there was an anti-war coalition in Congress to force us
16 to withdraw from Southeast Asia? It is not likely people will
17 find anything like that in their files again?

18 Mr. Colby. No.

19 Ms. Abzug. This is March 8, 1971, in front of the New
20 York Public Library in New York City, a demonstration of
21 people concerned about peace taking place. This Congresswoman
22 addressed them with respect to what was happening concerning
23 the majority of Americans in this country. This is in the CIA
24 file?

25 Mr. Colby. The intelligence business is not only a

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2 It is designed to accumulate all informa-
3 tion on a subject from whatever source. That is the foundation
4 stone of the establishment of central intelligence, so we would
5 not divide it up into different pieces. Therefore, the intelli-
6 gence business as an operation uses open material as well as
7 secret material.

8 With respect to the particular question, however, as I
9 indicated, that program was terminated fully in March of 1974,
10 and it was --

11 Ms. Abzug. March of 1974?

12 Mr. Colby. Yes, and it was reduced in scope and direction
13 in August of 1973.

14 We still do have under the statute and under the National
15 Security Council directives a charge to conduct clandestine
16 foreign counter-intelligence abroad. We will still do that in
17 counter-intelligence situations abroad which do involve the
18 operation of Americans abroad. We do that only --

19 Ms. Abzug. If an American goes to a peace conference or
20 international conference, will that name once again have a
21 folder and file and dossier?

22 Mr. Colby. If a situation arose abroad today involving
23 an American, CIA would be interested in that American's activi-
24 ties only as a result of a positive request by the FBI or in
25 coordination with the FBI.

Ms. Abzug. You could never say to the FBI, "I don't think

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2 do right. I don't think there should be this kind of
3 surveillance. It interferes with the right of travel. It
4 interferes with the right of ideas, and the First Amendment
5 rights"? You cannot say that to the FBI?

6 Mr. Colby. I could say that if it were a clear case, and
7 I certainly would. We have objected to certain cases for more
8 or less that reason.

9 Ms. Abzug. You are suggesting to me, and this is impor-
10 tant for the continuing work of this committee, that the FBI
11 very often is responsible for your inquiries which may very
12 well invade the privacy of an individual as that inquiry is
13 followed up; is that right?

14 Mr. Colby. The FBI is responsible for the internal
15 security of our country. In the course of that, they are
16 interested in the possible threats to that internal security
17 from abroad. That involves possible foreigners who are against
18 our internal security, and we have the job of helping the FBI
19 to identify those threats.

20 We have identified terrorists. We have identified other
21 types of threats coming from abroad.

22 The FBI also is interested --

23 Ms. Abzug. I am not talking about terrorists, obviously.
24 I am talking about people who distribute leaflets, people who
25 have ideas in their heads, people who express words, people who
are exercising the safeguards of our American democracy --

1 First Amendment rights -- to be able to have ideas, to travel,
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2 to speak, to write.

3 We cannot reconcile that in the Privacy Act, for you to
4 be able to accumulate all of this rotten stuff about people,
5 making believe the legitimate activities which they are exer-
6 cising to safeguard our democracy is being somehow questioned
7 by some super-agency, super-snooper, the FBI and the CIA. I
8 cannot see how you can continue when you say you are not going
9 to do it any more, but yet you are going to do it.

10 Mr. Colby. No. I said I would not do the questionable
11 ones. I said we still do have a responsibility to assist the
12 FBI in legitimate questions abroad about relating to the inter-
13 nal security of the United States. There are people who are
14 Americans --

15 Ms. Abzug. On page --

16 Mr. Steiger. Would you yield, please?

17 Ms. Abzug. Certainly.

18 Mr. Steiger. In order to bring the situation which Ms.
19 Abzug recited into focus, and for my edification, the item in
20 her file which recited her appearance before a peace group, was
21 that the result of a surveillance of Ms. Abzug or that peace
22 group?

23 Mr. Colby. There are two such items. One is a report of
24 the activities of a foreign organization abroad, and Ms.
25 Abzug appeared. That was a CIA report.

1 Mr. Steiger. Surveillance of a foreign group. 65
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3 Mr. Colby. That is right.

4 The second item is a copy of a report sent to CIA by an
5 American agency which mentioned in an unclassified fashion the
6 fact that Ms. Abzug had spoken at a meeting in New York. That
7 was not a CIA report, but it was in our files and it was an
8 unclassified matter, so we felt obliged to give it to Ms.
9 Abzug at her request.

10 Mr. Steiger. Do you know whether that agency made that
11 finding as the result of a surveillance of Ms. Abzug, or the
12 peace group she addressed?

13 Mr. Colby. I do not know.

14 Ms. Abzug. One question, and then we will have to recess
15 until 1:00 o'clock.

16 You indicated this is not a complete file. Am I not
17 receiving the rest of my file just because of the protection of
18 sources?

19 Mr. Colby. Yes, and also because certain of the material
20 belongs to another agency. This will be referred to the other
21 agency. This is the procedure set up for responding to --

22 Ms. Abzug. Can you give me a hint?

23 Mr. Colby. We are referring it to the other agency for
24 their action.

25 Ms. Abzug. Perhaps you can suggest they communicate with
me?

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Mr. Colby.

2

Ms. Abzug. SowI can make a similar request of that agency?

3

Mr. Colby. I will.

4

Ms. Abzug. I would like to put the pieces together. When I was a kid, they taught me to do jigsaw puzzles.

6

Mr. Colby. That is what I do all day long, Ms. Abzug.

7

Ms. Abzug. I find it very edifying.

8

One other question before we leave, and we will talk again this afternoon.

10

Did I get a direct answer as to whether you would turn over an individual's file in the same manner as this was?

12

Mr. Colby. I will.

13

Ms. Abzug. The only other thing I wanted to ask about is this: I assume you have criteria where you decide to destroy files.

16

Mr. Colby. Yes.

17

Ms. Abzug. Before you imposed self-restraint. I would appreciate it if you would be prepared this afternoon to discuss some of the criteria of matters you indicated in your testimony which really have not been gone into.

21

In order for us to determine whether or not we should strike your general exemption, and you know I believe that, I have been trying to do that before you revealed these domestic files, and I think it just proves the correctness of my position. I mean, it just so happened that that event took place.

25

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1 Mr. Colby. I don't think so, but ---

2 Ms. Abzug. In other words, we want to find a way to make
3 this Act work, even though we may differ. We may yet come to
4 a conclusion as to how to do that. I want to get into some of
5 the areas in which you have been engaged, including the other
6 matters involved here.

7 I didn't get into details as to whether the intelligence
8 activities were directed in certain areas, to protect intelli-
9 gence sources, how you reconcile that with directing your
10 intelligence at members of the media, branches of the media, or
11 information the media obtains from other agencies. We are
12 talking about privacy, the rights of individuals. We are also
13 talking about that atmosphere which permeates privacy. There-
14 fore, members of the press, in particular, have to have certain
15 rights of privacy.

16 Mr. Colby. All right.

17 Ms. Abzug. I would like very much to get into that.

18 Mr. Colby. The press and I are equally concerned with the
19 protection of our sources, Ms. Abzug.

20 Ms. Abzug. But the individuals who function, either in
21 your agency or in the media, are entitled to their privacy.

22 Mr. Colby. Right.

23 Ms. Abzug. Which is a different matter from the one you
24 just stated.

25 Mr. Colby. All right.

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2 I want to get into that this afternoon.

3 This meeting stands in recess until 1:00 o'clock.

4 (Whereupon, at 11:30 a.m. the subcommittee recessed, to
5 reconvene at 1:00 p.m. the same day.)
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2 (The subcommittee reconvened at 1:45 p.m., Hon. Bella
3 Abzug, chairwoman of the subcommittee, presiding.)

4 Ms. Abzug. I am sorry for the delay, gentleman. Unfortun-
5 nately, inasmuch as I arrived late at the White House, it was
6 difficult to leave early, before the session was ended.

7 Mr. Maguire would like to ask some questions at this time.

8 Mr. Maguire. Thank you, Madam Chairwoman.

9 Mr. Colby, I served for three years as a member of our
10 delegation to the United Nations. In that connection, I served
11 as an employee of the Department of State and had a top security
12 clearance.

13 I also, during the 1960's, was opposed to the war in Viet-
14 nam from time to time and engaged in peace activities in connec-
15 tion with the effort to bring a halt to the war.

16 I would assume that under those circumstances, either or
17 both of those circumstances, I would be likely to be somewhere
18 in your files. I wondered whether you could tell me how I
19 might find out what procedure I would follow in order to ascer-
20 tain whether or not I am and what information ---

21 Mr. Colby. You don't have to follow any procedure. I
22 will find out for you this afternoon when I get back.

23 Mr. Maguire. All right.

24 Mr. Colby. I shall send you a letter, as I sent Ms. Abzug.

25 Mr. Maguire. Is this something any citizen can do?

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1 Mr. Colby. Yes.

2 Mr. Maguire. And you act on that promptly?

3 Mr. Colby. Yes. As promptly as I can.

4 Mr. Maguire. A member of the press, for example, might
5 make a similar request? Does it have to be in writing, oral?

6 Mr. Colby. The particulars are that the Privacy Act will
7 not be in effect until September, so the rules and regulations
8 will be published then for the Privacy Act.

9 The Freedom of Information Act already is in effect, and
10 the rules and regulations for applying under that have been
11 published in the Federal Register.

12 Obviously, for a Congressman I shall just see what I can
13 do.

14 Incidentally, Madam Chairman, I did look up and find out
15 how many requests we have had so far for individual files of
16 this nature. It is 60.

17 Ms. Abzug. Under the Privacy Act?

18 Mr. Colby. It is not under the Privacy Act because it is
19 not yet in effect. Sixty requests as a result of this publi-
20 cation at Christmastime. We are in the course of answering
21 those. I think we have answered about half of them. We are
22 answering them using the same system we used with respect to
23 yours.

24 Mr. Maguire. You referred this morning to segregating
25 materials in the possession of your agency as to categories of

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1 of what might be proper or improper to keep or might have been
2 proper or improper to have collected in the first place. 71

3 There was some question as to whether or not you would be
4 notifying people on whom improper, on whom you would determine
5 improper materials had been collected and kept. I did not get
6 your response to that. Are you prepared to so notify such
7 individuals?

8 Mr. Colby. I really do not intend to notify them because
9 of the administrative burdens involved. If anyone asks, I
10 shall respond.

11 On the other hand, I did indicate that I hope that after
12 these inquiries are over, and I am relieved of the request not
13 to destroy anything that could relate to them, that some of the
14 ones that I think we should not have I can then destroy, and
15 just eliminate them entirely.

16 Mr. Maguire. There would be a possibility that an indivi-
17 dual on whom improper material might have been collected would
18 have an opportunity to look both at the proper and improper
19 material before any final disposition were made?

20 Mr. Colby. If he asks about his material, he will get any-
21 thing we have under either category other than something belong-
22 ing to another agency or something which reveals intelligence
23 sources there.

24 Mr. Maguire. That would be prior to any further disposi-
25 tion.

1 Mr. Colby. Eventually, I would like to get rid of those
2 that I do not think we should keep.

3 Mr. Maguire. In listening to your testimony this morning,
4 sir, it seemed to me that what you were saying to Ms. Abzug,
5 apropos of the material you had on her, essentially material
6 was gathered on her in the course of your surveillance of other
7 organizations or individuals.

8 The question is whether you intend in the future to do
9 things any differently from the way they have been done in the
10 past in connection with the collection of material which you
11 admitted this morning in some cases, with regard to Ms. Abzug's
12 file, was improperly held or collected material, and what would
13 those differences be?

14 Mr. Colby. Yes, Mr. Maguire. I said we put out some
15 instructions on this subject last year. Actually, we put out
16 the instructions in August of 1973 and then further instructions
17 in March of 1974 which deal precisely with this problem of what
18 kind of collection is proper and what kind of collection is
19 not proper.

20 Essentially, we are saying that CIA will collect abroad
21 only. It will collect on American citizens only incidental to
22 a foreign target where the name comes up, in which cases it
23 will be reported to the FBI, or that we will, at the request of
24 the FBI, follow up some question abroad to see whether we have
25 any information abroad about that individual, and then the reply

1 will come back and be transmitted to the FBI, so that we are
2 just acting for the FBI in an area where they cannot operate.

3 Mr. Maguire. You have given us the general thrust of that
4 document. Is that a document which is available?

5 Mr. Colby. It is not available. It is classified at the
6 moment. I am sure this will be made available to the Select
7 Committee. It already has been made available to the Presi-
8 dent's commission.

9 Mr. Maguire. I understand that was the thrust of your
10 earlier comment. I trust you are saying it will not be made
11 available to this subcommittee.

12 Mr. Colby. It is classified. It does have some matters
13 that I do not think should be revealed at this time to the pub-
14 lic. It does fall into this general category of our responding
15 about our operations to our own oversight committees and
16 responding to the other committees in the Congress about the
17 situation abroad, but not about our operations.

18 That is the rule we have used for many years, and the Con-
19 gress has not seen fit to change it except in the one provision
20 in which Mr. Ryan sponsored a change in the Foreign Assistance
21 Act.

22 Mr. Maguire. Who will get the document and who is not, and
23 what are the criteria to distinguish those two groups?

24 Mr. Colby. The oversight committees of the Armed Services
25 and of the Appropriations Committees. We have long had a

1 relationship with them which states that we will respond to
2 whatever they want. 74

3 I have, furthermore, said to them that I have a positive
4 obligation to inform them of things that I think they should be
5 informed of, and in my judgment they should be informed.

6 There are some things I do not think they would be inter-
7 ested in. They would not be interested in our parking regula-
8 tions or something like that. There are things they would be
9 interested in which are details of our activities. They might
10 not know anything about them, in which case it is my obligation
11 to tell them so.

12 In this situation, I have shown some of these to some of
13 the committees, and I would propose to make these directives
14 available to the Select Committees during the course of the
15 review of the activities of the CIA.

16 Mr. Maguire. But not to this committee.

17 Mr. Colby. I do not at this moment think it falls within
18 that category of the things I respond to.

19 Mr. Maguire. The reason I think --

20 Mr. Colby. This is a jurisdictional problem, obviously.
21 It is not anything we are holding back from the Congress. I am
22 responding to what I understand has been Congressional prece-
23 dent of how they supervised our activities.

24 Mr. Maguire. I shall proceed now with a series of ques-
25 tions relating to criteria which you use or are in the process

1 of development on sources and information activi-
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2 ties, sources, et cetera. 75

3 The reason I think this is important is that you are here,
4 in effect, asking us to preserve a blanket exemption for the CIA.
5 I think before we took any action of that sort, or refused to
6 take any action we might otherwise be considering, it is impor-
7 tant for us to understand what kinds of distinctions you are
8 making inside your agency on these matters.

9 You have said that a general thrust of the document we have
10 just been discussing is that the matters will be regarded as
11 proper and material, relevant, if it is related to the inter-
12 national as opposed to the domestic side of things.

13 Mr. Colby. Yes.

14 Mr. Maguire. That is a fairly general distinction. In
15 some of your own testimony you suggest how interrelated some of
16 these matters are.

17 Mr. Colby. Yes.

18 Mr. Maguire. Could you enlighten us a little further as
19 to the segregation process inside your agency with regard,
20 first, to information, what you regard as proper or improper
21 information to collect? Can you be more specific on that point?

22 Mr. Colby. It is very difficult to, because, as you say,
23 a lot of things do rub over at the edges. Basically, I think
24 every agency employee feels that the function of the agency is
25 foreign intelligence. Internal security is a matter for the

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1 FBI. That is a sort of simple, overall rule that is generally
2 applied as a situation is looked at.

3 It was, for example, the reply that was given by Director
4 Helms in 1967 when the National Commission on Civil Disorder
5 requested some help from CIA. Mr. Helms wrote back and said,
6 "We might have some things here we can give you, but we have
7 nothing to do with domestic security."

8 In other words, what he was saying is that there might be
9 something coming from abroad which might be of interest, but
10 it is not our job to do with domestic security. It is essen-
11 tially that broad guideline which has dominated the way we have
12 approached these problems.

13 When you get into things like coverage of an American
14 abroad, you obviously get into a thing which begins to overlap,
15 [or a foreigner in America.] You then get into complications. Or
16 an activity in America which supports a foreign activity. That
17 begins to get a little complicated as to where your limits are
18 and what your rules are. However, you try to follow the general
19 principle that if the object of the operation is a foreign prob-
20 lem, then it is properly ours. If the object of the operation
21 is a domestic activity, it is the FBI's.

22 There are various other guidelines and regulations we
23 have, and various instructions we have in the agency to try to
24 refine these and apply them to different subjects.

25 I said, for instance, that the instruction I gave in

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1 August 1973 was also in the room across the hall. Our name abroad
2 in some security or counter-intelligence context, then we will 77
3 receive that -- we run across it incidental to our basic activi-
4 ties -- we will report it to the FBI.

5 On the other hand, if the FBI comes to us and asks us
6 about some foreign connection of an American, we will do it in
7 response to the FBI's request and we will pass back the answer.

8 Mr. Maguire. All right.

9 Mr. Colby. We will not do any other coverage of Americans
10 abroad as an object of their own. That is part of that rule.

11 Mr. Maguire. Let me try to give you the kinds of examples
12 and things I am concerned about. Maybe that will help us.

13 In distinguishing between what is proper or improper infor-
14 mation, let's take three examples. You talked this morning about
15 the Provisional Revolutionary Government of Vietnam. You were
16 watching their offices, people going in and out, and you
17 detailed the information you learned, in the course of which
18 there was a meeting with Ms. Abzug, or a meeting where she was
19 present.

20 Let's take an example of an organization, a national
21 organization within some European country, for example, or an
22 international organization devoted to a certain purpose, what-
23 ever it might be, in which you might have reason to believe
24 there were agents of the Soviet Secret Police or some other
25 power, and there might, in fact, be individual Americans or

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1 Europeans in contact with individual Americans who might be
2 cooperating, et cetera, et cetera.

3 In that situation, would you then regard it as proper to
4 put the organization under surveillance in toto, including all
5 the individuals involved?

6 Mr. Colby. Foreign organizations?

7 Mr. Maguire. Yes.

8 Mr. Colby. If it were important, a foreign organization
9 is legitimately a foreign intelligence interest. If it is
10 worth looking at, it is a judgmental question as to the degree
11 we cover it. If it is a foreign organization abroad, certainly
12 there is no prohibition against it.

13 Mr. Maguire. But if it were not a Communist government
14 or provisional government, but, rather, an XYZ organization in
15 France, Germany or England pursuing certain humanitarian goals

16 Mr. Colby. Withot any reference to individual countries
17 or places, obviously there are a number of things which inter-
18 est us abroad and interest our country other than Communist
19 organizations. There are many things which affect the welfare
20 of our citizens other than the Communist organizations. We
21 naturally do try to cover them. There are terrorist organiza-
22 tions and things of that nature.

23 Mr. Maguire. Take the case of an organization in this
24 country composed of American citizens where you might feel
25 there was an agent of a foreign power involved. Does that

1 org Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1 subject of total surveillance,
2 including all the individuals within it?

3 Mr. Colby. No, and even the foreign agent involved is
4 not CIA's mission at that point in this country. That would
5 belong to the FBI. If we got an indication --

6 Mr. Magulre. If he were an American in touch, and you
7 knew it --

8 Mr. Colby. Still the function of the FBI.

9 If we got a tip from abroad that a certain American in a
10 certain organization was involved in some intelligence activity
11 for another power, we would merely inform the FBI of that, and
12 then they would handle the case from then on.

13 Mr. Maguire. There is a distinction, is there not, between
14 raw, unevaluated data and evaluated data?

15 Mr. Colby. That is right.

16 Mr. Maguire. Could you tell me, with regard again to the
17 question of what is improper or proper information, what happens
18 to data which you collect and, once you evaluate it, you find
19 it to be either superfluous, inaccurate, or malicious? What hap-
20 pens to that data?

21 Mr. Colby. Well, it depends. On some of it we get fabri-
22 cations, information which is not accurate. We judge it is not
23 accurate and we just ignore it or eliminate it and throw it away.

24 On the other hand, there may be a reason for its just
25 staying in the raw state and just not using it. In the

1 evaluation. It may not be worth the
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2 Obviously, there is an inclination to throw it away to
3 save space in such situations. However, the raw information
4 may come in in a message from some foreign station around the
5 world. We don't destroy the messages. It stays in the communi-
6 cations file, obviously, but then it is not used in the pro-
7 duction of the finished intelligence.

8 In some situations, if we run across a problem where one
9 particular source continually provides us material which is
10 fabricated or wrong, we may circulate a notice to certain of
11 the other intelligence agencies that this particular source is
12 the source of fabrication, so don't pay attention to it. We
13 sometimes do that.

14 Mr. Maguire. Is such material included or not included
15 in the file of Ms. Abzug which she received today, or which I
16 might receive if I requested my file?

17 Mr. Colby. As a raw item which came in from abroad, it
18 would probably be distributed to two or three possibly inter-
19 ested elements of the Agency, and one of them might file it if
20 it had -- and that might have been true of one of these particu-
21 lar ones about the visit you made to the Vietnamese. It would
22 have been filed.

23 That would not have been of much value. It was an open
24 statement. There was nothing secretive about it. Consequently,
25 it would not be used to draw any big conclusions in the finished

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2 Mr. Maguire. Turning to sources and methods, Mr. Colby,
3 you have indicated that protection of sources and methods is
4 critical and that that is one of the principle reasons why an
5 exemption would be required.

6 Mr. Colby. Yes.

7 Mr. Maguire. We talked this morning about newspaper
8 articles. Presumably newspaper articles are not a source or
9 method which needs to be protected.

10 Mr. Colby. That is right. The newspaper people think it
11 does, but I do not think the fact it appears in the press needs
12 to be protected.

13 Mr. Maguire. Exactly. Then on some kind of a scale or a
14 continuum between that on the one hand and the more sensitive
15 methods and sources on the other, where is the line to be drawn?
16 Are there other things besides newspaper articles which you
17 would feel you could release upon request which would not do
18 violence to your concept of protection of sources and methods?

19 Mr. Colby. Certainly. We publish every day a considerable
20 account of the foreign broadcasts of a number of countries
21 around the world. This is published in an unclassified form.
22 It is furnished around.

23 We provide this as a service to the Congress. If a Con-
24 gressman's name appears in one of those foreign broadcasts, we
25 send him a copy of it so he knows he is being talked about in

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2 Ms. Abzug. If the gentleman will yield ---

3 Mr. Colby. We do not make a record beyond that. We
4 merely send it for the courtesy of the Congressman.

5 Ms. Abzug. Have you ever received any? Mr. Harrington?
6 Have you, Mr. Steiger?

7 Mr. Steiger. No.

8 Mr. Harrington. No.

9 Mr. Steiger. That would hardly be conclusive. I am not
10 an international household name.

11 Ms. Abzug. I do not recall receiving any, except perhaps
12 once. I was curious about that.

13 Mr. Maguire. That is another item, foreign broadcast.

14 Mr. Colby. There are such things.

15 Mr. Maguire. Can we talk about those? What else fits
16 in a category which could be released without danger to sources?

17 Mr. Colby. There are certain translations of foreign
18 documents, reports which come in without a great source problem
19 in them. Again, I get back to the fact that the Central Intelli-
20 gence Agency gathers a lot of information from all kinds of
21 sources. This material, then, if it is unclassified in its
22 collection process, can then be released.

23 Mr. Maguire. Essentially what you are saying is that you
24 are glad you released unclassified information, but you would
25 not release classified information.

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1 Mr. Colby. I would look at the classified information to
2 see whether there was a sensitive source involved, whether the
3 release of the substantive information revealed the source.
4 There are many things we may have gotten through a secret means
5 but the release of the mere fact of that event occurring does
6 not necessarily point to the way we got it, in which case we
7 would release it.

8 Mr. Maguire. You anticipated my next question. So there
9 would be some material gathered by clandestine means which you
10 would, in fact, consider releasing?

11 Mr. Colby. Yes.

12 Mr. Maguire. Where you felt the source was not in danger.

13 Mr. Colby. Surely.

14 Mr. Maguire. Is it always possible, by the way, to trace
15 the source of any piece of data you may have in your file? This
16 morning you said you didn't know where you got one of the pieces
17 of paper relating to Ms. Abzug.

18 Mr. Colby. It is not always possible. That particular
19 item was a membership list, or something.

20 One of the items that was in Ms. Abzug's account does say
21 on it, "From a sensitive source we obtained a certain document."

22 However, the fact of that document does not really matter
23 too much and that would not reveal the particular source that
24 gave it to us. Therefore, it was included. That is Item C, I
25 think, Ms. Abzug.

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1 Ms. Abzug. That is very sensitive.

2 Mr. Colby. The source may be sensitive.

3 Ms. Abzug. It states "United States lawyer appearing on
4 the World Peace Council's mailing list."

5 Mr. Colby. The fact is not sensitive, which is why I
6 released it. The way we got it may have been.

7 Ms. Abzug. "The following names and addresses were con-
8 tained in the mailing list of the World Council of Peace."

9 Mr. Colby. The individual who gave it to us, or the means
10 by which we got it, may be a very sensitive fact.

11 Ms. Abzug. If the gentleman will yield further --

12 Mr. Maguire. Yes.

13 Ms. Abzug. If that is so, may I ask you, Mr. Colby, why
14 in your covering letter to my folder you suggest that some of
15 this material cannot be reviewed, and "that includes some inci-
16 dental reference to you and information provided by a sensi-
17 tive foreign source"? You can give me the information without
18 divulging the source.

19 Mr. Colby. That particular one I looked at. If that
20 were released, it would indicate we have a certain source and,
21 therefore, it would reveal that source.

22 Ms. Abzug. It is only an incidental reference.

23 Mr. Colby. That is right.

24 Ms. Abzug. Therefore, it seems to me --

25 Mr. Colby. We are telling you your name appeared.

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1 Ms. Abzug. Inasmuch as it is an incidental reference, I
2 would like the opportunity to see the complete invasion of my
3 privacy.

4 Mr. Colby. It merely states there was a reference to you,
5 but if you saw the entire thing you would know the source by
6 which I obtained it. That is a sensitive source.

7 Mr. Maguire. If I may continue questioning --

8 Ms. Abzug. One or two more questions.

9 Mr. Maguire. If you have a document where you cannot
10 determine what the source is, I assume, therefore, no source
11 needs to be protected.

12 Mr. Colby. Generally, yes. That is a sensible approach
13 to it.

14 Mr. Maguire. You referred this morning, also, to dis-
15 continuing activities which seemed to have been improper. Can
16 you go beyond what you said a few moments ago generally about
17 the foreign connection being the criterion? Can you tell us
18 anything more about activities you would regard as improper
19 which you would discontinue?

20 Mr. Colby. There was a series of events which came up
21 when we looked around for questionable activities. They are,
22 in general, outlined in my testimony to the Senate and the House
23 Appropriations Committees. That general category is included,
24 and there are others.

25 Mr. Maguire. I take it that is fully reflective of your

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1 testimony, please?
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2 Mr. Colby. Not fully. There are other activities not
3 covered in that, but there are various things we found where we
4 said we would not do it.

5 Mr. Maguire. Would you like to answer that?

6 Mr. Colby. I would rather not do it here, because a number
7 of them involve some sensitive matters.

8 Mr. Maguire. That is something you will discuss at another
9 time?

10 Mr. Colby. I certainly expect to discuss it in the Select
11 Committees and in Executive Sessions.

12 Mr. Maguire. We are talking here about an overall exemp-
13 tion. My final question, then, after summing this up, is this:

14 It seems as if you are saying you will release some
15 classified information.

16 Mr. Colby. Yes.

17 Mr. Maguire. You will release some information obtained
18 by clandestine sources and by methods which would be sensitive,
19 but you seem to limit this. Why is not Item 4(k) of the law
20 sufficient for the purpose here, for protecting national defense
21 and related interests?

22 I really fail to understand why the overall exemption is
23 needed. Any of the things you described where you would limit
24 yourself would seem to come under (k).

25 Mr. Colby. Not necessarily. The easiest example, and

1 there. Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1
2 the easiest example is the American who
3 gives us some information in confidence and on the condition his
4 name not be revealed. The revelation of that information and
5 the revelation of his name would not cause any problem in our
6 foreign policy necessarily, and might be hard to associate with
7 our national defense in a narrow sense, but it is an intelligence
8 source and method and contributes to our total intelligence
9 knowledge. I feel an obligation to protect that contribution.

10 Ms. Abzug. If my recollection serves me, the confidential-
11 ity provision we have would seem to cover that confidential
12 source.

13 Mr. Colby. I am not sure it would under the phrasing.

14 I think the other problem I have, quite frankly, is that
15 those regulations are subject to judicial review de novo.

16 If I could get, as I have indicated, an intelligence source
17 and method exemption which did permit us to benefit by the pre-
18 sumption that was stated by the court in the recent Marchetti
19 case, of which I have a copy of the opinion, and I might give
20 it to you for the record if you would like, Madam Chairman --

21 Ms. Abzug. I have no objection.

22 Mr. Colby. The court does indicate there is a presumption --

23 Ms. Abzug. If there is no objection, we shall receive the
24 Marchetti case into the record.

25 (The document referred to follows:)

COMMITTEE INSERT

1
2
3
4

5 Ms. Abzug. May I ask you to yield on this issue?

6 Mr. Maguire. I am almost finished.

7 Ms. Abzug. One question.

8 Mr. Maguire. Surely.

9 Ms. Abzug. In the early part of our hearing this morning
10 you made the same point. Now you are repeating the same thing.

11 One of the reasons you oppose a change of our eliminating
12 the general exemption is that you object to court review. What
13 is wrong with court review?

14 Mr. Colby. I think what is wrong with court review is
15 expressed in the opinion of the court in the Marchetti case;
16 that in many of these matters it is so complicated and it
17 requires the revelation of so much additional sensitive material
18 that we can be in a situation where we cannot protect material
19 without revealing other material. That gets us into a very
20 serious problem.

21 The idea of a court review to insure that we do not do it
22 arbitrarily or capriciously, I have no objection to.

23 Ms. Abzug. You stated in your many remarks before this
24 committee and others that you would want to defend and uphold
25 the law. I concur with you on that.

2 system and we have judicial review as a very integral part of
3 our constitutional structure, and it seems to me there is an
4 important competence and recognition of that competence would
5 seem to be important to a bureaucrat of Government, as it should
6 be to a Member of Congress; that is, to recognize that that
7 competence is in a court and we have judicial review just be-
8 cause it is essential and an important safeguard to the liber-
9 ties of the people of this country.

10 Therefore, your constant objection to judicial review,
11 even in the Marchetti case, where it is suggested it is too
12 complicated, the courts have made cases in very complicated
13 antitrust cases, for example, where even questions of law are
14 much more complicated than some of the decisions involved in
15 the question we are discussing.

16 I find it difficult to see that you are not allowing one
17 branch of Government to check another branch of Government.

18 Mr. Colby. I think I did indicate I was ready to accept
19 that. I said I was prepared to accept a judicial review pro-
20 vided it is not a judicial review de novo, but, rather, a
21 review to insure that our decisions -- and I agree with you
22 that the administrative decisions are not arbitrary and capri-
23 cious. There are literally thousands of very complicated sub-
24 jects handled by administrative boards and commissions which are
25 subject to that kind of judicial review and not a de novo

1 judicial review. I have no objection to that kind, and have.
2 so indicated.

3 However, I do have trouble with the idea that de novo
4 judicial review take place because that raises very complicated
5 and dangerous precedents in the intelligence business.

6 The ICC, all the rest of the commissions, they are subject
7 to that kind of a judicial review. I accept that, also.

8 Ms. Abzug. We have to be able to separate the fact we
9 have intelligence problems and privacy problems. We have to
10 allow some determination of that. It is difficult to suggest
11 it can be determined only by those who abuse it.

12 Mr. Colby. I am not saying it is only determined that way.
13 I am stating their determination is subject to a judicial review
14 to determine whether they act arbitrarily or capriciously.

15 Mr. Maguire. I shall conclude shortly.

16 You mentioned a moment ago as a case in point something
17 that you would want to protect, in addition to what is pro-
18 vided for by way of protection under Item (k). You mentioned
19 the confidentiality of a source.

20 As I read section 4(k)(2), it is already provided for. It
21 states information shall be provided except where the disclosure
22 would "reveal the identity of the source who furnished informa-
23 tion to the Government under an express promise," et cetera.

24 Why is that item not covered in that language?

25 Mr. Colby. It is still subject to that kind of judicial

1 review. That is my problem. The burden is clearly on us to
2 justify the retention of the material according to the provi-
3 sions of the Act. I think in some of these complicated things,
4 it would be appropriate to provide a judicial review to insure
5 that we do not act arbitrarily or capriciously and apply the
6 standards set in the Marchetti case. That I accept.

7 Mr. Maguire. You would accept (k) as adequate to your
8 purpose if you had the arbitrary and capricious review process
9 as opposed to de novo?

10 Mr. Colby. Essentially, if you moved (k) up to (j), up
11 to subparagraph (j), and replaced the Central Intelligence
12 Agency exemption there with that kind of a provision.

13 Mr. Maguire. That would be acceptable?

14 Mr. Colby. It would be.

15 Mr. Maguire. Alternatively --

16 Mr. Colby. I would like a chance to review this at some
17 depth with my counsel, but I think this is roughly right.

18 Mr. Maguire. Alternatively, what about maintaining the
19 existing blanket exemption with the understanding that judicial
20 review would be de novo? Would that be acceptable?

21 Mr. Colby. It is not de novo in that case. That exemp-
22 tion does release us from the problem of judicial review of
23 those. Under this circumstance, there is none.

24 I am not insisting on the same language that is there.

25 Mr. Maguire. Are there any other categories in order to

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1 narrow down that blanket exemption? Are there other categories
2 you would want to be sure are included in the exempt language
3 other than the individual being protected without de novo
4 judicial proceedings? What other additional categories are you
5 looking for?

6 Mr. Colby. We have come up with definitive language about
7 intelligence sources and methods.

8 Mr. Maguire. Can you provide that?

9 Mr. Colby. Certainly.

10 Mr. Maguire. Is it available today?

11 Mr. Colby. I think we would like to look at it to be sure.
12 Essentially, I think it is ready, yes. We have prepared it for
13 other purposes.

14 Mr. Maguire. That would certainly be helpful to me.

15 Mr. Colby. I would guarantee providing you with such
16 language.

17 Mr. Maguire. Thank you.

18 Ms. Abzug. Mr. Steiger?

19 Mr. Steiger. I would like to inject a note of reality to
20 this Alice in Wonderland stuff. As a red-necked, simplistic
21 farmer it occurs to me that the conflict has been instilled by
22 the gentlelady from New York when she says we have a conflict
23 between security and privacy. I suspect we always will.

24 Our judgment has to be how far we infringe on one and
25 jeopardize the other.

1 As far as I am concerned, if a court is given the right to
2 review de novo any specific situation, it occurs to me again as
3 a layman you will not get anybody to share any information with
4 you in the future because that could be the situation which
5 would be reviewed in court, and it is no reflection on the
6 competence of the court, but simply the fact that the court is
7 not secure. There is no way to make it secure, and perhaps it
8 should not be secure. It becomes public information.

9 We do not know how important that is. We can only assume
10 it is important.

11 Mr. Colby. I know how important it is from conversations
12 with the heads of foreign intelligence services who express
13 great concern about the Freedom of Information Act. I have
14 assured them we will do our best to protect their secrets, but
15 I was unable to give them any flat assurances.

16 Mr. Steiger. The bottom line is that I do not care how
17 many people you have, how much money you spend, how skilled
18 you are, how greatly you exercise the cunning and resourceful-
19 ness for which the Agency is famous, you have to get information
20 from people. If you lose the security that these sources are
21 entitled to, don't you place in greater jeopardy the same
22 people, along with the entire nation, as far as loss of security
23 and vital information?

24 We hear a lot about how heinous it is that somebody is
25 snooping. It occurs to me, to the great majority of us, and I

1 include Ms. Abzug, Mr. Maguire, and others who might be in your
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2 files --

3 Ms. Abzug. And Mr. Steiger.

4 Mr. Steiger. And Mr. Steiger, yes. It occurs to me it
5 should be a source of at least as much comfort as aggravation
6 to know that the Agency is alert and is observing, because the
7 bottom line is that the Christian world we all yearn for is not
8 yet in place.

9 I would simply tell you that I do not know what the months
10 ahead will bring. I know what the next few minutes will bring,
11 but I do not know what the months ahead will bring.

12 I want you to know that the dialogue you have heard and
13 will hear is not reflective of this Nation. I honestly believe
14 that.

15 The same zeal that so many of these same people talk about,
16 protecting confidentiality of news sources, and they do it
17 sincerely, the same zeal they display in attacking the concept
18 of the invasion of privacy, the American public is better able
19 to make that distinction. That may be small comfort, but I am
20 firmly convinced of that. I think the CIA on any kind of
21 balance has the support of the Nation.

22 Mr. Colby. Ninety-five out of every one hundred letters
23 we have received in the last couple months has been supportive
24 of the Agency.

25 Mr. Steiger. Please do not go by your mail.

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1 Mr. Colby. I agree.

2 Ms. Abzug. May I ask whether those folders were made on
3 those letters?

4 Mr. Colby. They were received and replies were sent to
5 the people, both the people who protested --

6 Ms. Abzug. What do you do with all those letters?

7 Mr. Steiger. The bottom line is that this is the story of
8 the moment. I am sure to your Agency and your people the world
9 must feel as though it is crashing in.

10 As a testimony to democracy, I will say for all the horror
11 stories about secret service agencies in other countries, I
12 know of no other nation which would subject its confidential,
13 inter, or whatever it is, agency in the same way you are being
14 subjected. It is a credit to the country you are subjected to
15 this and do not abandon the battle. I do not mean this to
16 flatter you. I think it is one of the great strengths of this
17 country.

18 I hope that in your desire to preserve the Agency, you do
19 not abandon what you believe is correct. I think you can com-
20 promise only up to a point.

21 Again, I think most of us recognize that if all the
22 machinations of the CIA, as well as all the machinations of the
23 Congress were laid bare, it might be an educative process, but
24 perhaps unsavory. I suspect proctology suffers from the same
25 examination. The fact is that these are necessary and essential

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2 Madam Chairman, I am grateful for your indulgence and
3 courtesy.

4 Ms. Abzug. Thank you very much.

5 Mr. Harrington. I was curious about some of the digres-
6 sions and methodology employed by the Agency alluded to in the
7 course of a rather intensive discussion about Mrs. Abzug's
8 file. In the exchange of information, what is the process
9 involved? Will you go into that? I refer to exchanging, swap-
10 ping, and gathering information from other sources.

11 I am not talking about specifics as far as the sources as
12 much as the mechanics. How computerized and how extensive is
13 the operation? By inference, I assume there is a method you
14 have undertaken to deal with the problem involving a vast array
15 of information which passes through your hands daily.

16 Mr. Colby. We have developed considerable computer capa-
17 bilities for this because obviously we deal in a number of dif-
18 ferent languages.

19 The name that is written in one particular transliteration
20 will not be the same spelling or the same name in another trans-
21 literation. We have had to go to some effort to develop ways
22 of tracing these names, keeping them in our files in whatever
23 language they originally started, and make them translatable
24 into something that can be used.

25 We do collect them into a basic central computer, but then,

1 for security reasons, we split and cover them in different ele-
2 ments and different collections. For example, our security
3 file is held in one compartmented area and it is not available
4 to people outside the security office.

5 The personnel file is held in another area ^a and not avail-
6 able to people outside the personnel office other than the
7 individual employee who can locate his own personnel file.

8 We have other situations in which we have counter-intelli-
9 gence files kept on a very compartmented basis. We have the
10 files for active and sensitive intelligence areas, essential
11 sensitive projects, or sensitive activities where we keep them
12 in a compartmented fashion.

13 If a new fact comes in, there may be a note that there is
14 a file on someone in one of these compartmented files, but it
15 will not have the details because that cannot be spread out
16 elsewhere. That would be the name and an indicator that more
17 can be found if you go into that file. That is the way you do
18 this kind of business.

19 As for other agency information, we do obviously circulate
20 to our fellow intelligence community agencies information which
21 we get through our foreign operations --

22 Mr. Harrington. Can you express what agencies are involved?

23 Mr. Colby. It will depend on the particular subject and
24 the particular report. In other words, each report would be
25 looked at and a determination made as to which agencies this

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1 will be useful to.

2 If it is an American and there is some security or counter-
3 intelligence problem reflected therein, it will be passed to
4 the FBI.

5 If it is a member of our military services, it would be
6 passed to the appropriate service, the Army, Navy or Air Force.

7 If it is general information we obviously, without refer-
8 ring to any individual American, will select to whom it should
9 go depending on their interest in that subject. An economic
10 subject would go to the Treasury Department. A political sub-
11 ject would go to the State Department. A military subject would
12 go to the military departments.

13 Correspondingly, they distribute to us a lot of material
14 which they get. We receive copies of transmissions from
15 Defense attaches, from Embassies, from various other places
16 around the world, and we then use those in our process.

17 If we want to be able to retrieve the material later, then
18 we will indicate that, so we can get at it again if we want to
19 in the future. If it has no permanent value, it will be thrown
20 away as fast as possible because we want to get rid of the load
21 of it.

22 Mr. Harrington. Most of the agencies can be referred to
23 as part of the intelligence community included in this transfer
24 process?

25 Mr. Colby. Yes.

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1 Mr. Harrington. Some degree of self-selection?

2 Mr. Colby. Yes. In other words, the Army, Navy, Air
3 Force, NSA, they would not be receiving much of our material
4 because basically they send us things. It would be the FBI.

5 Mr. Harrington. What area of your own Agency is respon-
6 sible for overseeing this function you described to us in the
7 broadest sense?

8 Mr. Colby. Each different element will do part of it.

9 Mr. Harrington. Is there something which ties it together?
10 Is there a computerized process?

11 Mr. Colby. The compartmentalization problem does affect it
12 very heavily. For instance, our biographic material is held in
13 a certain office under our Directorate of Intelligence. Our
14 operational material, including our contacts with foreign people
15 for operational purposes, will be held in our Directorate of
16 Operations. These will be separated into different areas. The
17 security material will be held in the Directorate of Support and
18 Administration.

19 Ms. Abzug. Is there any reason why, if you discover that
20 the material that is given to you is not relevant to intelligence
21 that you do not dispose of it?

22 Mr. Colby. We do frequently.

23 Ms. Abzug. Under what circumstance do you decide to dis-
24 perse this, which creates files which might be immaterial? When
25 you disperse it, you obviously have no interest in it and your

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1 job, it seems to me it is to coordinate the activity of
2 the Nation and not to be a dispersal or a creator of files on
3 people which may have no relevance except to maintain files on
4 people. This can be a very serious bureaucratic, expensive,
5 as well as invasionary practice. Way don't you just let it go?

6 Mr. Colby. We do with a large amount of it.

7 Ms. Abzug. Under what conditions do you disperse it if it
8 does not affect anything concerning intelligence-gathering
9 which you need in order to protect our country? Why do you dis-
10 tribute it to other agencies? For what purpose?

11 Mr. Colby. As I say, we distribute our intelligence to
12 other agencies, positive intelligence, what we learn about the
13 rest of the world. We put it together and we then produce
14 finished intelligence and put conclusions in it.

15 Secondly, in some situations we do produce biographic
16 material, for instance, on large numbers of foreign people
17 around the world where we have biographies. These are dis-
18 tributed to the Department of State when they will have a
19 visitor, a new Ambassador when he is going to another country,
20 whatever. This kind of material is then prepared and summarized
21 so the new Ambassador knows something about the people he will
22 be dealing with.

23 With respect to names of Americans, they will be reported
24 only if they have some security or counter-intelligence aspect.
25 They would not even be reported in from the field if they did

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1 not. Our stations in some foreign country would not be sending
2 in something which really does not concern intelligence, some-
3 thing of criminal activity, political attitudes, and so on,
4 other than something legitimately of concern to our Government
5 for counter-intelligence work. This would not be sent in.
6 There is a lot of that material which we just do not report.

7 Mr. Harrington. In the non-biographical sector of infor-
8 mation-gathering, perhaps not reflecting Ms. Abzug's file, how
9 many files do you have of American citizens for one reason or
10 another which fit into these areas?

11 Mr. Colby. As I say, I cannot tell you how many files there
12 are because they are divided into all these compartments and
13 spread around.

14 Mr. Harrington. Intelligence data of the kind you have on
15 Ms. Abzug.

16 Mr. Colby. Ms. Abzug's material was collected from two or
17 three different places. Some of these are duplicative. In
18 other words, Ms. Abzug's name appeared in at least two places
19 in the Agency. One was the counter-intelligence program which
20 I mentioned of following possible foreign links to American
21 dissidents. One was a collection of material which had been
22 made in the Security Office.

23 Mr. Harrington. As a person who spent a good part of his
24 lifetime in the Agency, and has had some intensive appreciation
25 of a number of the activities of the Agency, why would there

2 be available or could be made available at least to the point
3 where we had an estimate which you felt comfortable in making?

4 Mr. Colby. I frankly do not feel comfortable in making
5 it. Take this mailing list here, for instance, one of these I
6 referred to earlier. How many names on that appear someplace
7 else and do not appear elsewhere, it is impossible to make an
8 estimate as to how many total American names we have. There is
9 not a figure.

10 The Agency has been in existence for 27 years, and in that
11 time it has accumulated a lot of names. I cannot give you an
12 estimate.

13 Mr. Maguire. On this point, if a name comes up incidental
14 to some other matter which you are following, does that name
15 then automatically get its own file opened up? How does that
16 work?

17 Mr. Colby. Probably not. In other words, the first time
18 the name comes in there will not be a file opened on it unless
19 it is a particularly important problem reflected.

20 Mr. Maguire. How many times does the name have to come
21 in incidental to other matters?

22 Mr. Colby. A rough rule of thumb of one section of the
23 Agency was that if you got three, four or five different reports
24 about an individual, you would put those three, four or five
25 reports together so you could see them all at one time.

1 What is the rule of thumb made for that purpose. It has
2 no real meaning to it at all. It was just an administrative
3 convenience of the people running that particular program.

4 Mr. Maguire. Strictly on the basis of the number of times
5 it came up. Are there other criteria?

6 Mr. Colby. Yes, there are. In other words, if you get an
7 indication in a report from abroad that there is some very
8 serious problem involved of counter-intelligence or something,
9 then you probably would open the file right away because you
10 would be following that case very carefully.

11 Mr. Maguire. Could you, on the other hand, have 1000 or
12 1100 entries of a particular name without opening the file if
13 you judged it was not germane to the problem?

14 Mr. Colby. Yes. If the name was a name which really did
15 not have any particular significance, it was reported but we
16 obviously will do nothing with it, then you would not file it.

17 Mr. Maguire. At some point somebody judged Ms. Abzug
18 was of particular interest?

19 Mr. Colby. Yes, and somebody put them together in that
20 compartment.

21 Mr. Maguire. Do you have a computer somewhere keeping a
22 tally on the number of times a given name comes up before a
23 decision is made as to whether it is filed?

24 Mr. Colby. When a new name comes in, and there is some
25 significance to it, it is reported there is something of

1 significance, you will run a trace to see what other material
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2 you have on it.

3 If there is a file, that trace will tell you there is a
4 file, look at it. If there is not a file, it will tell you
5 where the three or four documents are.

6 Mr. Maguire. Every time there is a name?

7 Mr. Colby. Not every time.

8 Mr. Maguire. It goes on a tape and can be retrieved?

9 Mr. Colby. Not every time. If there is any significance
10 to the report of the name only. In other words, there is an
11 indicator which says, "I do think this should be recorded."

12 Mr. Maguire. Who makes that determination?

13 Mr. Colby. Usually the originator of the document sent in.

14 Mr. Harrington. I would think it would be useful --

15 Mr. Colby. I stress most of this is about foreign names,
16 obviously.

17 Mr. Harrington. Since it has become the "in" thing to do
18 on the part of both the Executive branch and the Legislative,
19 at least in certain quarters in recent days, to suggest that
20 many of the thorny questions posed by the CIA in the past will
21 be solved in due course by the various agencies which have
22 undertaken to engage in an overview of the intelligence community
23 it might be useful to give us a broad estimate of the number of
24 Americans who are in some fashion or the other meeting the
25 criteria we discussed here today.

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1 Mr. Harrington. I understand that you, and I
2 agree with you. I did look into whether I could come up with
3 any kind of an estimate. I was told I really could not because
4 of the complexity of it.

5 Mr. Harrington. I understand that you, in response to
6 earlier questions of mine this morning, and those of Congressman
7 Maguire, said that you have given or discussed the internally-
8 arrived-at memoranda or overviews of conduct to the existing
9 oversight committees of Congress. I am talking about August
10 of 1973 and March of 1974, the memoranda governing the conduct
11 of the Agency in certain areas.

12 Mr. Colby. I certainly gave them to the Commission. I
13 think I have told the oversight committees about them. My
14 memory is not good enough at this moment to say exactly to whom
15 I might have shown it. I think I did show it to some, but I am
16 not sure. I would have to do my homework to answer that.

17 Mr. Harrington. I get a clear indication that we got your
18 state of mind this morning as being your intention to make
19 known to the Select Committee chairmen --

20 Mr. Colby. That is right, and probably the Select Commit-
21 tees.

22 Mr. Harrington. All the memoranda?

23 Mr. Colby. Yes.

24 Mr. Harrington. But I thought in response to questions --
25 from Congressman Maguire and the general line of questioning

1 from me that you were indicating that you had complied, as you
2 **Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1**
3 viewed your existing Congressional mandate, with the requirement
4 of providing to the overseers the information which went to
5 Agency self-discipline in the areas discussed this morning, and
6 which properly occurred by virtue of your concern about it some
7 time in 1973, and again roughly in 1974, to Chairman Nedzi of
8 the existing oversight committee, or Chairman Mahon, of the
9 Appropriations Committee, or their counterparts in the Senate,
10 Senator McClellan. They have this physically in their possession?

11 Mr. Colby. They do not have it physically in their possession.
12 I believe I have shown it to some, but I am not sure. I
13 am pretty sure I showed it, but I will be able to answer that
14 through a look at my diary.

15 Mr. Harrington. What about one other area in general,
16 the Intelligence Review Board? I am not sure of the title of
17 the agency former Governor Rockefeller was on.

18 Mr. Colby. The President's ^{Foreign} Intelligence Advisory Board.

19 Mr. Harrington. It was in the Executive branch. Had
20 they been apprised of this same determination?

21 Mr. Colby. Only in the most broad and general oral presentation.
22 I might have shown them a few examples, but I
23 basically briefed them the way I briefed you and others; that
24 is, that we made a review of any questionable activities,
25 gathered them together, showed them to some people, undoubtedly

1 mentioned a few individual cases and examples, and then per- 107
2 mitted myself to give directives to stop any questionable activi-
3 ties in the future. I do not think we went into it in any
4 individual depth at that time.

5 Mr. Harrington. Are there any other quarters outside the
6 Agency besides those we referred to, and the way you have chosen
7 to describe this dissemination of information which you have
8 had occasion to deal with on the basis of apprising them on how
9 you have engaged in this self-restraint involving certain types
10 of conduct?

11 Mr. Colby. Obviously in the Executive branch I have told
12 a few people what it was about in general.

13 Mr. Harrington. Can you give us some indication?

14 Mr. Colby. Various of the people who are my supervisors
15 in the way the structure is set up. I would prefer not to get
16 further into it than that.

17 Mr. Harrington. Why?

18 Mr. Colby. I do not want to name their names in terms of
19 trying to indicate the degree to which anyone was fully informed
20 or not fully informed. Various of them in the National Security
21 Council have been informed in varying detail, depending on the
22 individual involved. I cannot break it down for you exactly as
23 to who knew how much.

24 Mr. Harrington. Would you care to characterize the method
25 chosen to provide them, or parts of them, the information? Was

1 it providing them with physical access to documents? How did
2 you give information to these people?

3 Mr. Colby. In general, it was either letting them look
4 at the documents or describing the documents and helping them
5 go through somewhat extensive numbers of documents and pointing
6 out some of the key ones.

7 Mr. Harrington. Other than to the Rockefeller Commission,
8 have you given anyone outside the Agency itself physical con-
9 trol or possession of the internally developed information you
10 described?

11 Mr. Colby. I do not believe so, no.

12 Ms. Abzug. Mr. Brown?

13 Mr. Brown. Mr. Colby, back when the CIA was founded and
14 the legislation was drawn in order to establish it, as I under-
15 stand it, the reason for its establishment was, among other
16 things, that there had been an incident in a Latin American
17 country where information about an uprising which had been
18 embarrassing to the United States, where an American Ambassador
19 or State Department officials were held captive for a while,
20 was not known in this country until several days later. Then
21 the word was passed by one of the American industries that such
22 an event had occurred.

23 It was then felt at that time that there was some need to
24 have an agency which would be alert to the international prob-
25 lems or problems occurring in foreign countries, in international

1 are ~~Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1~~ security
2 and international security of the United States and United
3 States' interests.

4 At that time, of course -- it was right after the war --
5 those interests were seen in fairly sharp focus by most Ameri--
6 cans because we had been involved in a world war in which the
7 division between things that were good for America and things
8 which were bad for America were quite clear.

9 Now, I get the impression that your Agency has been
10 involved or brought into the pursuit of these problems outside
11 the United States which fed back into the United States. I am
12 curious to know to what extent you feel there is still some
13 concern, or there should be some concern, about foreign appa-
14 ratuses and their involvement within the United States.

15 Mr. Colby. I think the best example of that is that,
16 according to the information which we understand from our
17 friends in the intelligence community --

18 Mr. Brown. What do you mean by "our friends in the intelli-
19 gence community"? Do you refer to the intelligence community
20 of other nations?

21 Mr. Colby. Other agencies in the United States Government.
22 About 100 individuals a year within the United States are
23 approached for possible recruitment and assistance to a foreign
24 intelligence service.

25 Mr. Brown. Domestic spies?

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1 Mr. Colby. No, a foreigner trying to recruit an American
2 to work for that government; about 100 a year.

3 Mr. Brown. To spy within the United States?

4 Mr. Colby. That is right. In the five years from 1970
5 to 1974 some 390 cases, similar cases, occurred abroad of
6 approaches to Americans to work against their country by foreign
7 intelligence services.

8 I believe this does indicate there are intelligence serv-
9 ices which are still trying to recruit Americans to work against
10 their country, and the counter-intelligence function, then, is
11 a process of meeting that challenge and trying to counter it and
12 identify where it succeeds.

13 Mr. Brown. If there are 100 about which you are aware ---

14 Mr. Colby. That is right. We do not know the successful
15 ones.

16 Mr. Brown. You do not know what the total number might
17 be or how many are successfully recruited?

18 Mr. Colby. We do not know the successful ones, but we do
19 know this number of approaches. Obviously, a successful one,
20 if it stayed successful, we would never learn about.

21 Mr. Brown. Under present circumstances, who follows up
22 on these American citizens spying for foreign nations within
23 the United States?

24 Mr. Colby. That is an FBI function within the United
25 States. If we learn something about it abroad, we would report

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1 it to the FBI and the CIA. ///
2 States.

3 If the individual went abroad, the FBI might ask us to
4 find out what he is doing abroad and what contacts he has with
5 his intelligence service friends abroad.

6 Mr. Brown. So the FBI is supposed to deal with the problem
7 domestically. You are supposed to deal with it abroad.

8 Mr. Colby. Right.

9 Mr. Brown. Do you also have commerce, or does the FBI
10 have direct commerce with the intelligence apparatus of foreign
11 nations?

12 Mr. Colby. We do. In some situations, the FBI has some
13 and we work on it together. We have a cooperative and collabo-
14 rative effort on such a relationship with foreign intelligence
15 or security services.

16 Mr. Brown. Given the change in climate between that which
17 I described following World War II, when there was a rather
18 clearly defined feeling of what was loyal and proper in terms of
19 American security interests and somewhat more fuzzy lines which
20 existed as to what the American security interests are, is it
21 your feeling that the law by which your Agency is established
22 should be in any way rewritten or clarified?

23 Mr. Colby. I have recommended certain clarifications to
24 the law. I referred to one this morning for the CIA. Wherever
25 you use the word "intelligence" use the word "foreign

2 I have also suggested it would be rather clearly stated
3 in the law what things CIA quite properly can do within the
4 United States. We do receive information from a lot of Ameri-
5 cans who contribute to us. We believe we have a legitimate
6 activity of collecting intelligence from foreigners in America
7 in coordination with the FBI, so we are not in any trouble with
8 their interest in the internal security aspect of that foreigner's
9 presence here.

10 There are a lot of other supporting activities we have to
11 do in America in order to collect foreign intelligence abroad.
12 I would be very happy to see some clarification of the proper
13 limits of our activity in the pursuit of foreign intelligence.

14 Mr. Brown. Given this 100 persons a year being recruited --

15 Mr. Colby. Attempted.

16 Mr. Brown. -- attempted recruitment of 100 persons a
17 year, and perhaps many more, perhaps some successfully, do you
18 have any concern about the possibility of subversion within
19 responsible positions in Government, some of which occurred
20 back in the Truman Administration?

21 Mr. Colby. Aside from CIA, this is not my direct responsi-
22 bility. I am responsible for CIA, and we obviously are con-
23 cerned about the possibility of a foreigner recruiting one of
24 our people to work with him.

25 We had one of our ex-employees who saw fit to publish a

1 book on personnel and intelligence. People and
2 the names of the foreigners with whom we worked over many years
3 in Latin America. I think this is quite a reprehensible thing
4 to do.

5 Mr. Brown. Why?

6 Mr. Colby. Because he is exposing those individuals to
7 possible death or the destruction of their livelihoods. One
8 of those individual's daughter has been hounded out of her local
9 school because the name appeared in that book. These are
10 people he worked with.

11 Mr. Brown. Are these American citizens or people we
12 recruited?

13 Mr. Colby. Some are American and some are foreigners. I
14 find very strange the fact that in this gentleman's resignation
15 letter on the 22nd of November, 1968, he said that he wished
16 to express his high esteem "for the colleagues with whom I have
17 worked who practically without exception have been loyal com-
18 panions as well as professionally competent intelligence offi-
19 cers. I feel especially fortunate to have served under the
20 supervision of certain of them. I believe strongly their
21 influence and example have been of real and lasting importance
22 to me. In spite of my resignation, I hope to maintain their
23 friendship as well as that of my other fellow officers during
24 the years to come."

25 He resigned for personal circumstances, but he said that

1 he also wished to make it clear that he understands security ,
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2 priorities, he regrets the inconvenience caused to many people
3 by his personal circumstances, and then he says, "I will con-
4 tinue to hold in high regard the importance of the Agency's
5 activities in the interest of the security of the United States.
6 I am hopeful that as my personal crisis subsides," which led to
7 his resignation, "I can be of use to Agency programs in years
8 to come."

9 This gentleman, in the note to his book, expressed his
10 appreciation for the assistance in putting his book together
11 which he received from the Communist Party of Cuba.

12 Mr. Brown. Under present laws, do you have any recourse
13 against that individual or the action he has taken? In other
14 words, if in fact you can establish someone whose position was
15 jeopardized or someone whose life was endangered or taken as a
16 result of this, is there any recourse for the Agency, you, or
17 the Government of the United States to protect those people who
18 have come into this activity, or is that a risk that anyone
19 in the CIA undertakes in a sort of Kamikaze sort of way?

20 Mr. Colby. The present law says he can be prosecuted
21 for criminal action only if he gave the information to foreigners
22 or he did it with intent to injure the United States.

23 He stayed outside the United States and, therefore, we were
24 unable to enforce the secrecy agreement he made with the intel-
25 ligence community when he came to work with it.

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2 valid, constitutional arrangement in the Fourth Circuit in
3 the recent Marchetti case.

4 We do not know whether there might be something in his
5 situation which would give us some legal recourse, but certainly
6 the lawyers up to date have advised me we have almost no hope
7 of any substantial effort against him as long as he stays out-
8 side the United States and as long as the present legislation
9 stays the way it is.

10 Mr. Brown. So such a person in his act at this point must
11 be judged only in the court of public opinion in this country.

12 Mr. Colby. That is right.

13 Mr. Brown. Since we are a body here concerning ourselves
14 with law and legislative acts which make the basis for that
15 law, are you conscious or has there been any study made, and
16 perhaps one should be made by this subcommittee, of the laws
17 in other lands where apparently intelligence activity exists,
18 and I guess it is much more common than we are aware of, that
19 being the whole test of it?

20 What laws exist in other countries which would deal with
21 this kind of a problem or which would relate to how to handle
22 this kind of a circumstance? Again, the KGB would not deal
23 with this as you have.

24 Mr. Colby. In totalitarian countries there is no question
25 about it. That is a totally different world.

1
2 which really would quite surprise Americans.

3 The British Official Secrets Act, in my opinion, is not
4 one we would willingly accept in this country, and I would not.

5 Mr. Brown. Can you tell us about that?

6 Mr. Colby. The key to it is that there is a right to
7 prevent the publication by action against the newspaper or
8 publisher.

9 There was a situation in another democratic country where
10 two journalists were prosecuted for the heinous crime of reveal-
11 ing that their country had an intelligence service and that it
12 dealt with the United States. This was considered adequate to
13 subject them to criminal prosecution.

14 These are democratic countries, in anybody's test of the
15 kinds of rules which would be expected. We just do not have
16 anything. I do not think we want anything like that, but I
17 think we need an improvement in what we have.

18 We are in a situation today in which one of our employees
19 of the Internal Revenue Service who reveals your income tax
20 return commits a crime. An employee of the Department of Agri-
21 culture reveals a cotton statistic in advance and thereby
22 commits a crime.

23 An employee of the Census Bureau reveals a ^{an} census return,
24 individual census return, and he commits a crime. However, the
25 gentleman who reveals the name of an intelligence agent only

1 commits a crime if he reveals it to a foreigner or he does it .
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2 with intent to injure the United States.

3 Mr. Brown. I would like to ask, Madam Charman, if Mr.
4 Colby or his agency or others have knowledge of the laws which
5 apply in other countries which maintain intelligence apparatuses
6 that that be submitted in the form of a digest or some refer-
7 ence to them so this committee might have them for study. I
8 assume you do not have them with you.

9 Mr. Colby. I do not, but I would be happy to. Of course,
10 I go back to the fact that anything we suggest will have to be,
11 and I want it to be, under our constitutional system, and
12 consequently, a foreign system is not translatable to our
13 system.

14 Mr. Brown. May I ask roughly ---

15 Ms. Abzug. Would you like that information in any case?

16 Mr. Brown. Yes.

17 Ms. Abzug. Would you be good enough to submit that infor-
18 mation?

19 Mr. Colby. Yes.

20 (The information to be furnished follows:)

21
22
23
24
25

1 Mr. Brown. I would like to ask the number of industrial-
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3 ized nations in the world, say out of the top 25 or 30, which
4 maintain foreign intelligence operations.

5 Mr. Colby. Most of them. Most countries maintain intelli-
6 gence services.

7 Mr. Brown. How many separate them between domestic
8 intelligence or criminal investigation activities such as the
9 Federal Bureau of Investigation, and the international kind of
10 intelligence, such as the responsibility presumably the CIA has?

11 Mr. Colby. The ones which have an extensive foreign
12 interest frequently do have a separate foreign intelligence
13 service from their internal security service. Some which have
14 no particular foreign involvements just do not have much
15 activity in the foreign intelligence field, and such as they
16 have, they conduct out of their regular security service.

17 On the other hand, certain of them do engage -- well, the
18 line between them is much less precise than even the one we
19 have between the FBI and the CIA. As I say, I obviously was
20 trying to explain this line between us. There are areas where
21 they overlap slightly in terms of the foreigner in America or
22 the American abroad.

23 However, in other countries that difference will frequently
24 be a very substantial overlap rather than a tiny overlap. I
25 would say most of your larger countries do maintain an intelli-
gence service.

2 change in attitude between this country as to what was inter-
3 national interest and national security interest for the United
4 States. There has been another fundamental change which we all
5 recognize.

6 Right after World War II we were literally the only game
7 in town. Every other military nation had been pretty well
8 reduced to second-class status. The United States military
9 apparatus and our involvement in the world, because of the fact
10 we had been involved on the winning side in the war, became
11 the strength for freedom after that war in the world, and we
12 were invited in and went in in other areas to try to protect
13 that freedom in the world.

14 I think one of the great leaders of the world recently
15 said something about the United States' unselfish qualities,
16 since we were the only ones at that time who had the atomic
17 bomb and could have ruled the world, chose not to, but chose to
18 defend freedom around the world for individual nations, both
19 those in existence and those emerging.

20 Inasmuch as that status has changed, since other nations
21 have become industrially and militarily strong, and have
22 developed their own international alliances, presumably with
23 the ambition of building world peace, since we have the United
24 Nations, is there, as a result of those substantial changes in
25 world politics and power, a need for the activities of the

2 to what extent has it changed and been modified so that it might
3 be based differently in law if we were to look into the laws
4 establishing the Central Intelligence Agency and tried to
5 modify them as a Congress?

6 Mr. Colby. The role of intelligence certainly has changed.
7 You are correct that the role of intelligence in the earlier
8 days of the 1950's and 1960's was heavily involved in the con-
9 frontation with the Communist expansion throughout the world.
10 It was a matter of identifying these threats and reporting them.
11 It was heavily dependent on what we call human source reporting,
12 people telling us things, people we dealt with.

13 In the last 15 years there has been a revolution in intel-
14 ligence, thanks to the growth of technology. Today we have
15 knowledge which in those days we did not even dream of having.

16 There also has been an enormous improvement in our ability
17 to analyze intelligence and put it together and arrive at con-
18 clusions. This has been a growth of the whole analytical
19 function of intelligence.

20 Also, I think the purpose of intelligence has changed in
21 the sense that the intelligence then was largely defensive and
22 protective and today intelligence's biggest function is its
23 contribution to our Government's ability to negotiate and to
24 maintain peace, rather than merely to defend ourselves.

25 It is precisely the knowledge we have of certain other

1 areas which permits our Government to negotiate with those 12/
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3 particular places and make arrangements for the reduction of
4 strategic arms. On some occasions we have dissuaded smaller
5 countries from going to war with each other out of misunderstand-
6 ing because our information was so much better.

7 Our intelligence today, I think, can contribute to the
8 maintenance of peace, and consequently plays a much different
9 role than it did at that time.

10 Mr. Brown. That is very interesting. We tend to think of
11 intelligence agents sneaking ashore from the submarine and
12 putting dynamite on the dam, or something, or capturing the
13 leader of a country. What you are saying is that we are really
14 gathering political information, and perhaps some other economic
15 and social information, with which our country is better
16 informed in order to deal in a diplomatic sense with the
17 negotiating problems we have in trying to achieve peace in the
18 world.

19 Mr. Colby. Right.

20 Mr. Brown. Sometimes between countries with which we have
21 no particular personal interest one way or the other, but just
22 to try to keep something from developing which may eventually
23 get us into a problem.

24 Mr. Colby. That has happened on several occasions, where
25 we have actually dissuaded our friends from opening hostilities.

Mr. Brown. Let me go back to the man who blew the cover

1 Central Intelligence Agency abroad and, if there is a need, 12-
2 Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1
3 to what extent has it changed and been modified so that it might
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15 and social information, with which our country is better
16 informed in order to deal in a diplomatic sense with the
17 negotiating problems we have in trying to achieve peace in the
18 world.

19 Mr. Colby. Right.

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21 no particular personal interest one way or the other, but just
22 to try to keep something from developing which may eventually
23 get us into a problem.

24 Mr. Colby. That has happened on several occasions, where
25 we have actually dissuaded our friends from opening hostilities.

Mr. Brown. Let me go back to the man who blew the cover

1 of agents. Suppose that I, as a citizen, or some other
2 American who considers himself loyal, picked up information about
3 something in a foreign country and in some way came to you with
4 it. In the first place, I am not sure what the vehicle is by
5 which we come to you with that information, but assuming that
6 is the case, what is the protection that I or some other Ameri-
7 can might have if we presented that information to you that we
8 would not be in some later circumstance embarrassed by somebody
9 writing it up and publishing it?

10 Mr. Colby. We get a lot of our information thanks to that
11 attitude on the part of a large number of Americans. They have
12 some knowledge about some situation around the world and they
13 either telephone one of our offices with the name and telephone
14 number in 40 cities around the United States, or one of our
15 officers who does this learns that they have some knowledge and
16 calls on them and asks them whether they are willing to share
17 their information with their Government.

18 If they are not, that is the end of it; forget it. If they
19 are, we obviously receive the information and we do make a
20 commitment to them that we will protect them as the source of
21 that information.

22 Mr. Brown. Can you back it up?

23 Mr. Colby. We can and have up to now. I think we will
24 continue to be able to do it. I intend to do it in these hear-
25 ings, and I intend to protect the names of the individuals who

1 do this. The reputations of some of these people can be 12.3
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2 ruined, and in particular their businesses can be destroyed if
3 they have substantial business interests which can be destroyed
4 by one headline which denounces them as somehow working with
5 the CIA. I can protect them, and I will.

6 Mr. Brown. Thank you, Madam Chairman. You have been very
7 patient with me.

8 Ms. Abzug. You are very welcome.

9 On page 16 you state that the CIA has destroyed a number
10 of files containing material which is not appropriate. How
11 many files have been destroyed and will you state under what
12 conditions you destroyed them, and what do you consider to be
13 inappropriate material?

14 Mr. Colby. We had various lists of people considered to
15 be a possible security threat if they were approached or if
16 they came into contact with the Agency. It did not seem appro-
17 priate that we keep such a list because we did not have any
18 connection with them, so consequently, those files have been
19 destroyed.

20 There have been different categories of those kinds of
21 individuals. They would be destroyed by either the cards being
22 torn up and burned, or if it were on a tape, the tape would be
23 taken off and the tape actually destroyed.

24 Ms. Abzug. What made you stop destroying them?

25 Mr. Colby. The request from the Senate and the House to

investigation that the Select Committees will be engaged in.

Ms. Abzug. How did you choose a file you destroyed?

Mr. Colby. By the category pretty much.

Ms. Abzug. Security? Just on the security category?

Mr. Colby. No, but that the category of that particular file did not seem appropriate for us in CIA to keep.

Ms. Abzug. What is the criteria for what is appropriate? What do you consider to be inappropriate material?

Mr. Colby. The appropriate material is something which does have a legitimate relationship to our counter-intelligence mission or is one of the types of files which I described in my statement today, where there is a rationale for our having that particular file.

For example, the name of the individual cited by Mr. Brown who came and offered us certain information, I think it would be legitimate for us to have a record of the fact that we are dealing with that man, that he is a friendly American who has given us some information. We would have that name. I would not destroy that.

However, someone who has no contact with us, and where we have no basis for any question with respect to their counter-intelligence, I do not think it is appropriate for us to keep that file, even though beforehand it might have been kept under the misunderstanding that it could affect the security of the

1 Agency and our ability to protect our intelligence sources.
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2 Ms. Abzug. What have you done with the files which were
3 incidental references made of various Members of Congress,
4 including myself?

5 Mr. Colby. Some are still there.

6 Ms. Abzug. Many are not relevant and some are matters of
7 incidental reference, invasions of privacy, such as my file.
8 What have you done with those?

9 Mr. Colby. Your file we sent back to you, what we could.
10 With respect to the incidental reference, this does not mean
11 that the material may not be significant. What it means is that
12 we picked it up incidental to an operation aimed at another
13 subject.

14 Ms. Abzug. You have indicated different things. You said
15 first there was a former Congressman, nobody from the 90th to
16 the 94th Congress included, but one former Congressman was
17 included; is that correct?

18 Mr. Colby. I amended that statement in the errata sheet
19 later because we found some additional material. In the errata
20 sheet, I think, we changed that number to four.

21 Ms. Abzug. Four?

22 Mr. Colby. Four, of which you were one.

23 Ms. Abzug. So we now have three.

24 Mr. Colby. And one died.

25 Ms. Abzug. On what basis do you maintain those files?

1 For example, in my case you indicated there was nothing improper
2 as to anything I did, and you no longer would be collecting 126
3 material with respect to my activities as a Member of Congress,
4 as a citizen exercising my obligation, my First Amendment
5 rights. I am no longer practicing law, so you can no longer
6 interfere with my attorney-client basis, as you did in the
7 past.

8 On what basis do you maintain these other files?

9 Mr. Colby. I think I indicated we are in the course of
10 segregating what we should not be keeping according to the
11 rules I stated. The rules I stated for collection from now on
12 are that we will collect anything that comes to us incidentally
13 to a positive target abroad where an American comes into the
14 picture somehow, will be reported, and his name will be
15 reported to the FBI if there is any substantial reason for
16 security or counter-intelligence reasons for doing so. If
17 there is not, he will not be reported in that sense.

18 Secondly, the FBI specifically asks us to follow what
19 foreign contact somebody makes abroad. We would do that and
20 report the results to the FBI.

21 Ms. Abzug. Did you send me an original file or a copy of
22 it? Do you still retain the items you sent to me?

23 Mr. Colby. I sent you a Xerox, Ms. Abzug. That material
24 is still there and under the request levied on me by the House
25 and Senate, I cannot destroy anything that might be relevant

1 to the inquiry made by the Select Committees at this time.
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2 Ms. Abzug. What is the criteria you use to segregate
3 records in preparation for further action?

4 Mr. Colby. Whether it fits within the current guidelines
5 as to the proper area of our foreign counter-intelligence or
6 intelligence collection, as I outlined those guidelines.

7 Ms. Abzug. How many files do you have, in addition to
8 Members of Congress, where there is incidental reference or
9 information developed in the course of our foreign intelligence
10 operation?

11 Mr. Colby. As I indicated, there are a number of situa-
12 tions where we have names of Congressmen in our material. I
13 commented there are at least two Members of Congress who once
14 were employees of the Agency. There are other Congressmen who,
15 in their previous occupations, had access to our sensitive
16 intelligence and got clearances for that.

17 There are other Congressmen who have given us help in the
18 past in terms of information provided to us, or even positive
19 help in arranging cover for some operational activity abroad.

20 Ms. Abzug. I have to be excused, because I have to vote
21 on something. I will ask Mr. Maguire to take over the chair.
22 I shall return." Please continue.

23 Mr. Brown. Suppose you were one of the Members of Con-
24 gress who were in the CIA. Your career would be ruined, would
25 it not?

2 still there. I think they are.

3 Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1
fact. I think they have told their voters.

4 Mr. Maguire (presiding). If I may pursue one other point,
5 I want to thank you for the time you have spent today. I
6 have found it helpful.

7 Mr. Colby. Thank you.

8 Mr. Maguire. As I understand it, we are talking here
9 ultimately about whether or not we should revise the law.

10 Mr. Colby. Right.

11 Mr. Maguire. Under the present situation, you have a
12 blanket exemption.

13 Mr. Colby. A blanket exemption from certain of the pro-
14 visions, yes.

15 Mr. Maguire. Which means there is no court review of any
16 of the matters we have been discussing today.

17 Mr. Colby. That is right.

18 Mr. Maguire. You also indicated, if I understood you
19 correctly, that you could envisage ending the blanket exemption
20 if the protection under paragraph (k) were not to involve de
21 novo proceedings; in other words, if it were to involve arbi-
22 trary and capricious types of proceedings. That would be
23 acceptable.

24 Mr. Colby. I would like to have a chance to look into
25 that in detail. As I remember it, paragraph (k) refers only

2 of our activity would be a little difficult to put under that
3 category and still would be something, I think you would agree,
4 that would be sensibly protected.

5 I think that could be done by the use of the term "intelli-
6 gence sources."

7 Mr. Maguire. The remaining question is, then, as to the
8 criteria which are going to be established and who is going to
9 know what those criteria are. I do not think there is a mood
10 in Congress right now to continue the blanket exemption.

11 Mr. Colby. Right.

12 Mr. Maguire. I could be wrong about that, but that is my
13 reading. If that is true, you may be stuck with de novo review
14 unless you are able to explain adequately, and perhaps have it
15 specified in the law, as to what is and is not a proper and
16 improper activity or what is or is not a compromise of a source
17 or method.

18 I am not a lawyer, but to achieve a state where arbitrary
19 and capricious review means something, it has to be related to
20 something.

21 Mr. Colby. You have to have a standard, yes.

22 Mr. Maguire. In relation to what.

23 Mr. Colby. Surely.

24 Mr. Maguire. In the absence of knowing to what it will
25 be related, you will probably be stuck with de novo reviews.

1 I would just encourage you to submit the piece of paper you
2 suggested earlier you were working on. 12/30
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3 Mr. Colby. Thank you. The one we have here, I think, has
4 some good language. It is perhaps still subject to too much
5 ambiguity. I think it needs to be tightened up a bit for that
6 purpose.

7 Mr. Maguire. To the extent you can make it clear, I think
8 you will protect the interest of the Agency and method.

9 Mr. Colby. I think you are correct, yes.

10 One thing: I was asked whether our material had been
11 exposed to anybody other than those we discussed. I forgot to
12 mention that I did expose these activities, and also I believe
13 some of the directives, but maintained the activities, to the
14 Department of Justice.

15 Mr. Kronfeld. On page 16 of the statement you indicated
16 you keep information on persons the Agency might want to con-
17 tact for cooperation or assistance in order to determine whether
18 an approach would be appropriate.

19 Assuming that you determine an approach would not be appro-
20 priate, what do you envision the disposition of those files to
21 be?

22 Mr. Colby. A record would probably exist in the way the
23 machinery works. If you go to the effort of making a study of
24 it, you would probably keep the material.

25 I wanted to outline that so it would be clear that this is

1 a problem. I recognize it as a problem. I think if it is 13
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3 limited to those cases where in good faith you really want to
4 use them and then decide not to, you have a legitimate basis
5 for keeping the fact that you made that decision and the basis
6 for it.

7 Mr. Kronfeld. That would not be --

8 Mr. Colby. That would fall under the overall directive
9 that we will not keep material in the form of a blacklist. In
10 other words, our keeping of it would have to be in some other
11 way than some list of people who for some reason or other have
12 a black mark.

13 Mr. Kronfeld. That would not be the kind of information
14 disseminated to other agencies?

15 Mr. Colby. No, it would be done for ourselves.

16 In the course of such an investigation and consideration of
17 the possible connection with an individual you found something
18 which was a clear danger in the counter-intelligence field, then
19 I think you would be obliged to bring that to the attention of
20 the FBI.

21 Mr. Kronfeld. All right.

22 Mr. Colby. In just an ordinary one where it did not seem
23 that the person would be appropriate to do the work with us, we
24 would just make the decision and stick it off in the file and
25 forget it.

Mr. Kronfeld. In this particular kind of investigation,

1 then you are working in the domestic area, in an area that the
2 FBI generally would be covering.

3 Mr. Colby. It might be, yes. The FBI would know of our
4 activities. We have a cooperation so they know we are doing
5 this. They would undoubtedly know we were interested in that
6 individual. We would ask them whether they had any information
7 on him which would help us to make the decision about whether to
8 approach him or not.

9 Mr. Kronfeld. Thank you.

10 Mr. Maguire. You refer on page 15 to the maintenance of
11 records concerning "crank mail." Did you coordinate these
12 records with the Secret Service, or any other agency?

13 Mr. Colby. No, just if there is some threat which comes
14 up. You get a certain amount of mail which just does not make
15 much sense. We try to keep a note of what that is. If it comes
16 in again we build up a file on particular, dubious cases, and
17 then we might ask whether anybody else has anything on this.

18 Mr. Maguire. Would you oppose a GAO audit of CIA's informa-
19 tion system published in annual notices under the Privacy Act?

20 Mr. Colby. The relationship with the GAO is one which
21 over the years we started out where they actually audit a number
22 of our activities. After a few years, it was then decided by
23 GAO that if they could not audit it all, they didn't want to
24 audit it.

25 We have since done our own audit under the CIA Act of 1949

1 and the provision of the 1947 Act which gives the Director the
2 authority to certify expenditures.
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3 I think this question obviously will come up in the Select
4 Committees, the degree of GAO supervision and audit of our
5 activities. I think we are anticipating we will be able to
6 respond to the Privacy Commission and its inquiries. We will
7 just have to work out something.

8 We do give annual reports to people like the Civil Service
9 Commission, and other commissions throughout the Government.
10 I am sure we can work out something which would be reasonable
11 on both sides.

12 Mr. Maguire. You would not say generally an audit on a
13 regular basis would be --

14 Mr. Colby. Current arrangements under the statute is
15 that certain of our matters are not audited. This is a specific
16 provision of the Act which allows that for matters which need
17 confidential control. I think this will be looked at by the
18 Select Committee.

19 Mr. Maguire. Getting back again to the question of cri-
20 teria, have you drafted regulations regarding the activities
21 of your domestic field personnel as far as they might have been
22 involved in incidents which you admitted in earlier testimony
23 might be improper or inappropriate?

24 Mr. Colby. I issued some general instructions which I
25 wrote myself which went down the chain of command to the

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2 I think, in addition, we have looked at the Agency regu-
3 lations. There have been some modifications of that.

4 Mr. Maguire. Can you tell us about what you wrote?

5 Mr. Colby. Ones such as those I referred to: Keeping of
6 files on Americans will be done only if there is a legitimate
7 basis for it, and that they be kept in a fashion which does not
8 subject us to the charge we are maintaining any kind of black-
9 list or watchlist of them for improper purposes.

10 There are a variety of others: that we will not do a study
11 in depth of U.S. domestic groups, and a lot of other specific
12 instructions. These were the ones which have been given to the
13 Rockefeller Commission and will be given to the Select Committee.

14 Mr. Maguire. You are back to the same problem. What you
15 are saying is so general in nature that it is very difficult to
16 justify anything other than a de novo proceeding if people are
17 to have any kind of protection. An arbitrary and capricious
18 proceeding presupposes more detailed criteria, it seems to me,
19 and in the absence of those criteria an arbitrary and capricious
20 proceeding is the equivalent of a blanket exemption. How do we
21 get out of this vicious circle?

22 Mr. Colby. Frankly, I think the way out is the way out we
23 have used over the years on our oversight. I think we will get
24 more oversight, but the fact is that the arrangement has been
25 that certain committees will have full access to the details of

committees. They must satisfy themselves that the controls and the supervision and the guidelines are adequate.

We have not reported that kind of detail to other committees of the Congress, even in some cases where the other committee might say it has a legitimate interest in that particular general subject in the Government as a whole. It is a compromise worked out years ago between the need of the Congress to supervise and appropriate, and the need of the intelligence agencies to keep some very tight control over the secrets.

That compromise will now be up for some reconsideration, I think. We may get some new forms of supervision to satisfy the Congress that it is aware of the specifics.

In the Select Committees, I am sure we will get at how this will come out.

Mr. Maguire. If we followed your suggestion that redress be in the form of arbitrary and capricious types of proceedings if some individual felt aggrieved, for whatever reason, and brought a case to the judge-- presumably that is not in public, but all held in camera -- how is the judge going to make a judgment? Will he have access to these details and criteria which might have been given to the committees you mentioned?

Mr. Colby. It would be up to us to convince the judge, and I think the judge would demand that we convince him, that whatever decision we made with respect to that individual's

1 files, we either would say we have given them all, which is 136
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3 fine, under oath, or if we had not given them all that we had
4 a certain specific reason for holding some back.

5 I think the judge himself would insist on proof to him that
6 we had legitimate basis for that decision; not that he then
7 would have to make the decision about whether a certain thing
8 should or should not be classified or retained, but he would
9 have to look into it. This is a normal judicial process.

10 Whether there is a substantial basis for the decision is
11 a normal process.

12 Mr. Maguire. That might or might not involve his having
13 access to certain documents.

14 Mr. Colby. That is right. In the Marchetti case, the
15 judge did have access to certain of the material. We showed him
16 certain documents which indicated the classification of the
17 matters. We also had testimony from some of our people as to
18 why it was necessary to keep those matters confidential.

19 Mr. Maguire. Then why is de novo procedure difficult for
20 you to accept?

21 Mr. Colby. It is a different standard of judgment. The
22 standard of judgment for a judge to discover whether there is a
23 reasonable basis for our decision is not all that difficult to
24 demonstrate in any case where it is true.

25 On the other hand, the question about whether a certain
individual's files should be kept secret or should not can

1 involve an awful lot of detail and range rather far into some
2 other operations which might be jeopardized by it.

3 In order to demonstrate clearly beyond the shadow of any
4 doubt, you then would have to expose a lot more material to be
5 sure you have convinced the judge that there properly should be
6 material withheld.

7 Ms. Abzug. Have any CIA officials been dismissed as the
8 result of a leak of domestic activities or surveillance?

9 Mr. Colby. I do not believe so.

10 Ms. Abzug. There must have been. I see, even though there
11 have been a lot of mistakes made, or some mistakes made, as you
12 put it, and some serious damage done to the functioning of your
13 Agency, you might complain all you wish, but the problem which
14 has arisen was brought upon you by yourself. The damage was
15 done not by those who seek now to adjust the situation so we
16 can have a proper agency, but by those of you who participated
17 in illegal activities.

18 Mr. Colby. I do not think they were all that clearly
19 illegal.

20 Ms. Abzug. I will tell you something flatly. Let's get
21 one thing clear right away. Opening mail of a lawyer with
22 respect to matters affecting a client is clearly illegal. Okay?
23 I do not think there is any argument about that. I would like
24 to hear an argument which proves otherwise.

25 I have shown a great deal of calm about this today, Mr.

1 Colby, because I am in a position of being in the chair. I
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3 felt that I wanted to make clear I can be as objective as pos-
4 sible, even though there is a certain subjectivity in being
5 victimized by a country in which I was born, and served in
6 every way I know how.

7 To find myself in your files to me is most outrageous. I
8 consider it a blot on the democratic system, and not only on
9 me personally as a responsible citizen in our society.

10 Mr. Colby. You will find no more.

11 Ms. Abzug. You interfered with my role as a lawyer. I
12 practiced law for 27 years in the State of New York, and very
13 honorably, I might add, and my activity in the cause of peace,
14 of which I am proudest of almost any other activity. To me
15 that is quite repugnant.

16 It is not a personal matter, but a matter of society, a
17 democratic society, being on the right course. I will do
18 whatever I can to be cooperative, objective, and as helpful as
19 I can.

20 To suggest to me there were no illegal activities engaged
21 in is quite out of order.

22 In any case, everybody is there. The same people are
23 making incidental references, putting people's names in files,
24 and so on. Is that right?

25 Mr. Colby. No, Ms. Abzug, that is not right. There have
been some very direct instructions given with respect to this.

1 That ~~particular letter in your file would not be collected~~ Approved For Release 2005/11/28 : CIA-RDP90-00735R000300020001-1

2 today, nor anything comparable to it. 139

3 Ms. Abzug. You mentioned the fact you have guidelines to
4 guarantee against that. You also mentioned the 1973 and 1974
5 memo which indicates some reform.

6 You also indicated to other Members of Congress who ques-
7 tioned you today that they were not available to anyone except
8 the President's Advisory Committee, and you would be prepared
9 to make it available to various Select Committees.

10 Mr. Colby. Yes.

11 Ms. Abzug. We are dealing with legislation in this com-
12 mittee ultimately. The other committees are investigatory.
13 Their reports will require legislation by the Congress as well
14 as by this committee in many instances.

15 Therefore, I wondered why, since we are both an oversight
16 and legislative committee, particularly in the area of Govern-
17 ment information, we are probably on Government information the
18 only committee in the House dealing with some of the legislation
19 which affects Government information -- not talking about
20 intelligence activities -- why would we not be able to be
21 assisted in our work by receiving both the present guidelines
22 being used as well as the 1973 and 1974 memos that you referred
23 to?

24 Mr. Colby. I am trying to assist your work by appearing
25 here today.

I want to make clear I appreciate the long hours you have been here. I shall soon act to adjourn this hearing subject to coming back again. I appreciate your being here.

Mr. Colby. Thank you. I appreciate your remarks.

With respect to the provision of material, I am applying the precedent set by the Congress that the details of our activities will be reported to the traditional oversight committees, to which I have added the Select Committees in view of their special charter.

As I have many times indicated, we will respond to the Congress in the way the Congress arranges this, but over the last 25 years it has been worked out the way I am applying it.

Ms. Abzug. There is a question a lot of people want me to ask, and the Washington Star published a statement by Jeremiah O'Leary which spoke of large-scale surveillance of Cubans in Miami. Does this not conflict with your statement denying such surveillance?

Mr. Colby. What I was referring to in the testimony I gave to the Senate, where I mentioned, for example, the fact that sometimes in our files and in our activities we were following foreigners, and gradually some of those foreigners may have become Americans through naturalization, consequently, in that fashion, you may then end up with American national names in our files which were originally there because they

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2 We did not catch up with the fact of their change, or
3 that they continued in some cases, particularly in the Cuban
4 case, their foreign activities.

5 Ms. Abzug. I am a bit confused on this. Let me give you
6 a related question.

7 In the course of covering foreign activities, if an
8 American abroad is mentioned, will that information at this
9 point be included in a separate folder on that individual?

10 Mr. Colby. Not necessarily a separate folder. If, in the
11 course of following a foreign organization or subject abroad,
12 an American comes into that picture, and there is some good
13 reason for reporting that American's name, that there is some-
14 thing which indicates a counter-intelligence or security aspect
15 of that American's participation with that group, then the name
16 will be sent back here.

17 It will then be passed to the FBI. In the course of it,
18 we would make a notation we had done that, that we had received
19 a report from abroad and passed it to the FBI.

20 If we got a substantial number of such reports on the same
21 individual, for administrative convenience we probably would have
22 put all those reports into a single file, but until we got a
23 substantial --

24 Ms. Abzug. You might maintain one, and the FBI one as
25 well?

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1 Mr. Colby. Yes.

2 Ms. Abzug. There might be a whole bunch of folders main-
3 tained on women who will be attending the First Women's Inter-
4 national Meeting in honor of International Women's Year in
5 Mexico?

6 Mr. Colby. I do not think we will follow that as a counter
7 intelligence problem, Madam Chairman.

8 Ms. Abzug. It is okay with the CIA if we get a little
9 equality?

10 Mr. Colby. I have been very strong in my support of
11 women's liberation. I have supported women's liberation in the
12 CIA and done my best on it.

13 Ms. Abzug. We will have to get details on that on some
14 other occasion.

15 There is one other question which is troubling me on a
16 matter where you indicated an effort to make some improvement.

17 The question occurs to me that you have to get a lot of
18 information about individuals prior to deciding whether or not
19 you want to recruit that person. What happens to that material
20 when you do nothing with it?

21 Mr. Colby. I spoke of that with the counsel of the com-
22 mittee while you were out.

23 Ms. Abzug. I am sorry. I didn't know that. If it has
24 been answered, I do not want it repeated. I shall read that
25 in the record.

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2 What is your idea about how we will deal with the question
3 of this amendment? I think there would be much more support
4 for our view, access to the files by individuals.

5 Mr. Colby. In the conference report recommendations for
6 the previous Act, it stated that they expected the CIA, in
7 applying the exemption, would not be artificial about it and
8 would give as much as it could. That is my intention, as I
9 indicated.

10 Ms. Abzug. If you object to our eliminating your general
11 exemption, and you did discuss some of that with Mr. Maguire
12 earlier -- was that gone into?

13 Mr. Colby. He asked me for language which might help to
14 straighten this out.

15 Ms. Abzug. All right. I shall read that before I go to
16 other questions.

17 Mr. Colby. I have not yet given the language, but I shall
18 send it up.

19 Ms. Abzug. I want to be sure the record gets some of the
20 material I am looking for. This will guide us in our develop-
21 ment of legislation and give as much input from you as possible.

22 One of the problems that confronts us in this consideration
23 is this: I am not here to embarrass anybody or to do anything
24 except try to create some kind of restoration of fundamental
25 rights and the proper flow of Government information, taking

1 into consideration the public's needs and the private rights.

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2 I wanted you to understand that.

3 We have not finished with our inquiry in this area. We
4 have tried to confine ourselves, at least some of us have; some
5 have gone further afield, but that is natural. In addition to
6 having jurisdiction over the Privacy Act, we have general con-
7 cern with respect to Government information of all kinds.

8 I was a little disturbed this morning when I read about
9 the fact there was activity, the scope of the activity of your
10 Agency is so vast that it even involved possible political
11 assassinations of people all over the world. I found that dif-
12 ficult to understand.

13 This suggests we can invade people's rights, get intelli-
14 gence, and at the same time be respected. To engage in activi-
15 ties far afield is upsetting for most of us. I wondered whether
16 or not you could suggest anything to us on that subject.

17 Mr. Colby. I am engaged in an effort to try to restore
18 public confidence in the CIA. I think that the CIA makes a
19 major contribution to the safety of this country and the wel-
20 fare of our citizens. It has made an exceptional contribution
21 to the effectiveness of the intelligence profession.

22 I think it might have made some mistakes and misdeeds over
23 the past. They were few and far between. They have been
24 grossly exaggerated. I think that a proper investigation into
25 this will show both the good things and will show the small

1 degree to which we stepped out of line.

2 I think it will also show and enforce upon us a system to
3 be sure we do not step out of line again. I support that fully
4 because the people in the intelligence profession of this
5 Nation believe that they want to support and defend the Consti-
6 tution as much as any of us. We devote our lives to this pro-
7 fession because we believe in freedom, too. We believe freedom
8 has to be protected.

9 Mr. Phillips. Could the staff have unanimous consent to
10 submit extraneous material for the record and submit any addi-
11 tional written questions which might occur after our subsequent
12 hearing next week to Mr. Colby?

13 Ms. Abzug. Without objection, permission is granted.

14 Is there anything else, gentleman?

15 (No response.)

16 Ms. Abzug. I shall adjourn this meeting subject to
17 recall if necessary, Mr. Colby. The hour is late and I
18 appreciate your being here this long.

19 Mr. Colby. Thank you, Madam Chairman.

20 (Whereupon, at 3:45 p.m. the subcommittee adjourned, to
21 reconvene at the call of the chair.)

QUESTION #1 - In your testimony you included a number of references to the issuances in August 1973, and March 1974, of both "instructions" and "directives" on the problem of what kind of collection is proper and what kind of collection is not proper. Were all those issuances directive in nature and were they incorporated formally into the CIA's regular set of directives or were they instructions, and therefore advisory rather than binding on the recipients? To what operating levels were those "directives/instructions" addressed within CIA?

ANSWER - The instructions that were issued in August 1973 and in February (not March) 1974 were issued to the Deputy Directors. The memorandum forwarding the instructions to the Deputy Directors contained the following statement:

"I will expect full compliance with the instructions outlined herein."

These instructions were not incorporated in the normal Agency regulations, but were command directives from the Director of Central Intelligence to his four key Deputies. They were and continue to be binding on the recipients, who are responsible directly to the DCI for implementation within their respective Directorates.

In June 1974, following a review of assistance provided to other Government organizations by CIA, a set of instructions were issued by the DCI on a number of specific activities. Proposed new arrangements are subject to review and approval under a procedure whereby the Inspector General and General Counsel review recommendations of a Deputy Director; if there is disagreement the matter is referred to the DCI for decision.

3 Mr. Colby. Eventually, I would like to get rid of those
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that I do not think we should keep.

Mr. Maguire. In listening to your testimony this morning,
4 sir, it seemed to me that what you were saying to Ms. Abzug,
5 apropos of the material you had on her, essentially material
6 was gathered on her in the course of your surveillance of other
7 organizations or individuals.

8 The question is whether you intend in the future to do
9 things any differently from the way they have been done in the
10 past in connection with the collection of material which you
11 admitted this morning in some cases, with regard to Ms. Abzug's
12 file, was improperly held or collected material, and what would
those differences be?

14 Mr. Colby. Yes, Mr. Maguire. I said we put out some
15 instructions on this subject last year. Actually, we put out
16 the instructions in August of 1973 and then further instructions
17 in March of 1974 which deal precisely with this problem of what
18 kind of collection is proper and what kind of collection is
19 not proper.

20 Essentially, we are saying that CIA will collect abroad
21 only. It will collect on American citizens only incidental to
22 a foreign target where the name comes up, in which cases it
23 will be reported to the FBI, or that we will, at the request of
the FBI, follow up some question abroad to see whether we have
25 any information abroad about that individual, and then the reply

will come back and be transmitted to the FBI, so that we are
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Mr. Maguire. You have given us the general thrust of the document. Is that a document which is available?

Mr. Colby. It is not available. It is classified at the moment. I am sure this will be made available to the Select Committee. It already has been made available to the President's commission.

Mr. Maguire. I understand that was the thrust of your earlier comment. I trust you are saying it will not be made available to this subcommittee.

Mr. Colby. It is classified. It does have some matters that I do not think should be revealed at this time to the public. It does fall into this general category of our responsibility about our operations to our own oversight committees and responding to the other committees in the Congress about the situation abroad, but not about our operations.

That is the rule we have used for many years, and the Congress has not seen fit to change it except in the one provision in which Mr. Ryan sponsored a change in the Foreign Assistance Act.

Mr. Maguire. Who will get the document and who is not, and what are the criteria to distinguish those two groups?

Mr. Colby. The oversight committees of the Armed Services and of the Appropriations Committees. We have long had a

relationship with them which states that we will respond to
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whatever they want.

I have, furthermore, said to them that I have a positive obligation to inform them of things that I think they should be informed of, and in my judgment they should be informed.

There are some things I do not think they would be interested in. They would not be interested in our parking regulations or something like that. There are things they would be interested in which are details of our activities. They might not know anything about them, in which case it is my obligation to tell them so.

In this situation, I have shown some of these to some of the committees, and I would propose to make these directives available to the Select Committees during the course of the review of the activities of the CIA.

Mr. Maguire. But not to this committee.

Mr. Colby. I do not at this moment think it falls within that category of the things I respond to.

Mr. Maguire. The reason I think --

Mr. Colby. This is a jurisdictional problem, obviously. It is not anything we are holding back from the Congress. I am responding to what I understand has been Congressional precedent of how they supervised our activities.

Mr. Maguire. I shall proceed now with a series of questions relating to criteria which you use or are in the process

QUESTION #2 - On page 10, you state that the Privacy Protection Study Commission will be given access to the Agency records system.

a. Which systems will be accessible by the Commission?

ANSWER - It would, of course, be our intent to grant such access as the Commission determines is necessary in order to fulfill its charter. The Privacy Act defines systems of records as records which are retrievable by the name of the individual or some identifying symbol. The Commission, of course, pursuant to the Act will be concerned only with files on U.S. citizens and permanent resident aliens. Obviously in our systems of records there is sensitive information relating to Intelligence Sources and Methods and material which bears on the privacy of the individuals concerned. It is assumed that we will be able to work out satisfactory arrangements with the Commission in a manner which would be consistent with both their statutory responsibilities and mine.

b. Will staff as well as Commission members have access?

ANSWER - We see no reason why we could not work out appropriate arrangements for staff access to our systems of records if the Commission felt this was required. It is assumed that these would also reflect the requirements that certain intelligence sources and methods and the privacy of individuals be protected from disclosure.

c. Where will access take place?

ANSWER - I think the only place to comply with the Commission's determined need for access to Agency systems of records would be at the Agency Headquarters where the systems are located.

d. What Agency personnel, or categories of personnel will be available to the Commission members or staff?

ANSWER - Agency personnel who can properly and fully respond to the needs of the Commission will be the ones who most likely will be dealing with the Commission.

e. What other ground rules will be suggested by the CIA?

ANSWER - Obviously, security clearances would be a consideration, and to protect the sensitive information to which there may be exposure we would want a secrecy agreement executed. Also, to protect Agency sensitive information no Agency documents would be removed from the Agency's control or publicly released without appropriate Agency approval.

records in the Federal Register and what the Privacy Protection Study Commission will find when it makes its review of the Agency's systems of records after the Privacy Act becomes effective next September.

CIA's records collections which are biographic in nature consist of selected information from both official reporting and open-source material. In some instances, information from CIA's predecessor organizations is included in the collections. Our records, therefore, are the products of some 34 years of intelligence collection.

The main positive intelligence biographic collection contains information on several million foreign political, military, scientific, economic, technical, and cultural personalities. Information is filed alphabetically by name of individual within country of citizenship. The names of some U.S. citizens or permanent resident aliens appear in this collection -- we do not know how many. Such names appear in the collection for a variety of reasons: they may be associated in some way with a foreign personality in whom we are interested; the information contained in a particular document may have come from a named source who is a U.S. citizen or permanent resident alien; or we may

QUESTION #3 - Why would the repeal of section 3 (j) jeopardize the CIA responsibilities when in fact section (k)(1) protects information subject to section (b)(1) of the FOIA-- classified records?

ANSWER - The statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure [50 U.S.C. Sec. 403 (d)(3)] exists independently and is separate from the classification scheme established by Executive Order 11652. While nearly all details concerning particular intelligence sources and methods are classified, the consequences of an unauthorized disclosure may go beyond those which accompany the disclosure of normal classified information. For example, unauthorized disclosure may render a particular intelligence source or method ineffective for future use, or in some cases place a person or persons in physical danger. These consequences are of a different though equally severe nature as those by which the propriety of a particular classification is determined ("grave damage to national security," "disruption of foreign relations," etc.)

Repeal of subsection (j), which permits the Director of Central Intelligence to exempt records maintained by CIA from the individual access and judicial review provision of the Act, would seriously jeopardize the Director's statutory responsibility to protect intelligence sources and methods from unauthorized disclosure. For example, subsection (g)(3)(A) provides that a court may review de novo a refusal to permit individual access to records and in the process "may examine the contents of any Agency records in camera" for the purpose of determining whether the records may be withheld under subsection (k). The only provision under subsection (k) which would normally apply to CIA is the one which allows exemption for matter classified pursuant to Executive Order. Thus, without CIA's current exemption, the unique need for protection of intelligence sources and methods is recognized only insofar as a particular source or method may meet the classification standards of Executive Order 11652. As already pointed out, however, protection of sources and methods may involve different considerations than protection of classified matters alone.

QUESTION #4 - Assuming (k)(l) [classified records] is not sufficient protection in your view, what is the narrowest parameter within which the Congress could require broader access by individuals to information held about them by the intelligence community?

ANSWER - Even if Congress were to provide that Intelligence Sources and Methods constitute a grounds for exemption under subsection (k), the broad scope of the Act's judicial review provisions would still pose problems to the Director's statutory responsibility. The designation of Intelligence Sources and Methods as such is a matter uniquely outside the expertise and competence of a court. In addition, conditions surrounding de novo review pose security problems which are difficult to assess and counter. Thus, if Congress is convinced that the maintenance of Agency records on a secure basis is necessary judicial review of Agency determinations based upon protection of Intelligence Sources and Methods should be limited to whether there is a reasonable basis for the determination and that it is not arbitrary and capricious. In so providing, Congress may wish to require that the Director of Central Intelligence certify that the determination involves Intelligence Sources and Methods which require or warrant protection.

QUESTION #5 - In your testimony, you indicate that requests by individuals for access to information pertaining to them will be allowed if it does not reveal sources or methods.

a. How many requests have been made?

ANSWER - There have been a total of 517 requests received during the period from 1 January 1975 through 31 March 1975. In addition, approximately 100 requests did not provide sufficient biographic data to conduct a check and our response in these cases requested further identifying data.

b. How many have been approved in whole or part?

ANSWER - 16 responses involved the existence of information in Agency indices or files.

76 responses indicated there was no information in Agency indices or files.

425 responses are in process.

c. How many have been denied?

ANSWER - All requests receive a response as to whether or not there exists information in Agency indices or files. Where information does exist a determination is made as to what can be provided consistent with the protection of intelligence sources and methods.

QUESTION #6 - Please elaborate on the concept of sources and methods.
For example would a reference to an individual in a domestic newspaper be considered a "source?"

ANSWER - A reference to an individual in a domestic newspaper would not be considered a "source" within the interpretations made by Directors of Central Intelligence of the term "Intelligence Sources and Methods" in section 102(d) of the National Security Act of 1947 (50 U.S.C. 403).

Specifically, by application, Intelligence Sources and Methods concern Agency activities which are involved in the acquiring, by all manner and means including persons, techniques and technology, of foreign intelligence information and the processing of such acquired information for ultimate submission to the consumer. This also includes Agency activities which directly support the acquiring and processing effort. Such information is included within the statutory protection of intelligence sources and methods if its compromise would endanger the continuance of the intelligence collection effort.

QUESTION #7 - You refer also on page 2 to material "subject to determination by other agencies" and on page 17 to material falling "within the responsibility of agencies other than the CIA."

a. What is the distinction between these two terms?

ANSWER - These two terms are synonymous. This concerns material provided to the CIA by another agency. Section VI D of the National Security Council Directive on Classification, Downgrading, Declassification and Safeguarding of National Security Information dated 17 May 1972, prohibits the outside release of any information or material without the consent of the originating agency.

b. If information about an individual is subject to or within the responsibility of another agency, do you so notify the individual?

ANSWER - Requests from an individual are handled under the Freedom of Information Act. Under a rule promulgated by CIA and published in the Federal Register a request for a search of records is defined to include only CIA produced documents. If there exist documents from another agency, the request is referred to that agency, but the individual is not so notified.

Madam Chairwoman, the Agency is fully understanding of the policy represented in the Privacy Act of 1974. As urged in this Committee's report on the bill which became the Act, we intend to respond to requests under its provisions to the extent that responses would not jeopardize intelligence sources and methods or otherwise fall within the appropriate exemptions provided by the Act. While the Act itself is not effective until September of 1975, and while the CIA does have an exemption, we will, in response to requests, furnish to requesters such material as we have to the extent that it does not reveal intelligence sources and methods or is not material subject to determination by other agencies.

Your concern which led to this hearing, Madam Chairwoman, arises understandably from extensive press allegations that CIA conducted a "massive illegal domestic intelligence operation" within the United States. I have flatly denied such a charge before three committees of the Congress, and I am confident that the Commission appointed by the President to look into these charges and the Select Committees of the Senate and of the House, which undoubtedly will cover this subject in their wider

complete, however, and of course is suspended at this time in response to the investigation being made of CIA's activities by the President's Commission and the two Select Committees. I have directed, however, that the segregation process continue in the belief that, after the investigations are completed, the best disposition of these materials is destruction. In the interim, I propose to respect the privacy of the individuals whose names may be involved in such documentation by rejecting requests to make them public. On inquiries by individuals with respect to their own names, I propose to make available to the requester such material as does not reveal intelligence sources and methods or which does not fall within the responsibility of agencies other than CIA.

Madam Chairwoman, the release of CIA information is also a matter of some interest in view of the passage of the effective date of the Freedom of Information Act amendments on February 19th. In view of this subcommittee's interest in that Act as well as the Privacy Act, I thought you would be interested in our experience under that law.

First, our experience under Executive Order 11652 demonstrates CIA's effort to be as responsive as

QUESTION #8 - On page 16 of your statement, you refer to determinations of the likely attitudes of individuals whom the Agency might want to contact.

a. How are these determinations made?

ANSWER - Determinations are made by a study of openly available information, information contained in Agency files and in certain cases of recorded information requested from other agencies. In certain cases, in the absence of such available information, a background investigation is conducted.

b. Do they involve surveillance of any type?

ANSWER - No surveillance of any type is involved. In this regard, surveillance is understood to mean a clandestine covert undertaking directed against an individual as the subject of an intelligence operation.

c. Do they involve interviews with other persons?

ANSWER - In some cases other persons who have personal knowledge of a potential contact are interviewed.

d. If so, are these persons advised that they are giving information to the CIA?

ANSWER - This would be determined as to whether the contact with the individual will involve matters requiring the nondisclosure of a CIA interest. If so, the persons interviewed will not be advised that they are giving information to CIA.

By the very nature of its activity, CIA must record certain names of individuals who do not know they are being recorded. Thus, before it approaches an American on a sensitive intelligence matter, it would be less than prudent if CIA did not determine the likely attitude of the individual with respect to the proposal of assistance. If the determination was then made not to approach the individual, a record of that consideration would undoubtedly exist, but it would not constitute a blacklist or "dossier" on him.

Madam Chairwoman, as I have indicated, I believe that some of the material which was collected by CIA over the past 27 years may not be appropriate today although undertaken then under the belief that it fell within the charge on the Director of Central Intelligence to protect intelligence sources and methods or under the belief that it was included within our charge to collect foreign intelligence and counterintelligence. Over the past several years, CIA's files have been examined with an eye to eliminating material therein which is not appropriate. In the course of this, a number of files have been destroyed. This process is not

QUESTION #9 - Would you oppose a GAO audit of CIA information systems published in annual notice under the Privacy Act?

ANSWER - The Administrator of General Services is the authority in Federal Government on records management and is responsible for inspection and survey of record systems in Federal agencies. Specifically, the Office of the Archivist, under General Services Administration, is charged with performing this function. The Director of Central Intelligence would not oppose an audit by the Office of the Archivist of CIA's information systems that will be defined in the Federal Register under the Privacy Act. The Director would require, however, that the substantive content of the audit be subject to security approval prior to publication of the audit certification.

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1 FBI generally would be covering.

2 Mr. Colby. It might be, yes. The FBI would know of our
3 activities. We have a cooperation so they know we are doing
4 this. They would undoubtedly know we were interested in that
5 individual. We would ask them whether they had any information
6 on him which would help us to make the decision about whether to
7 approach him or not.

8 Mr. Kronfeld. Thank you.

9 Mr. Maguire. You refer on page 15 to the maintenance of
10 records concerning "crank mail." Did you coordinate these
11 records with the Secret Service, or any other agency?

12 Mr. Colby. No, just if there is some threat which comes
13 up. You get a certain amount of mail which just does not make
14 much sense. We try to keep a note of what that is. If it comes
15 in again we build up a file on particular, dubious cases, and
16 then we might ask whether anybody else has anything on this.

17 Mr. Maguire. Would you oppose a GAO audit of CIA's information
18 system published in annual notices under the Privacy Act?

19 Mr. Colby. The relationship with the GAO is one which
20 over the years we started out where they actually audit a number
21 of our activities. After a few years, it was then decided by
22 GAO that if they could not audit it all, they didn't want to
23 audit it.

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25 The GAO have since done our own audit under the CIA Act of 1949

3 I think this question obviously will come up in the Select
4 Committees, the degree of GAO supervision and audit of our
5 activities. I think we are anticipating we will be able to
6 respond to the Privacy Commission and its inquiries. We will
7 just have to work out something.

8 We do give annual reports to people like the Civil Service
9 Commission, and other commissions throughout the Government.
10 I am sure we can work out something which would be reasonable
11 on both sides.

12 Mr. Maguire. You would not say generally an audit on a
13 regular basis would be ---

14 Mr. Colby. Current arrangements under the statute is
15 that certain of our matters are not audited. This is a specific
16 provision of the Act which allows that for matters which need
17 confidential control. I think this will be looked at by the
18 Select Committee.

19 Mr. Maguire. Getting back again to the question of cri-
20 teria, have you drafted regulations regarding the activities
21 of your domestic field personnel as far as they might have been
22 involved in incidents which you admitted in earlier testimony
23 might be improper or inappropriate?

24 Mr. Colby. I issued some general instructions which I
25 wrote myself which went down the chain of command to the

QUESTION #10 - Have any CIA officials been dismissed as a result of discovery of possible illegal or questionable activities regarding domestic activities?

ANSWER - No. I have found no grounds for taking disciplinary action but some matters are under consideration by the Justice Department. Current and future reviews by the President's Commission on CIA Activities Within the United States and by select congressional Committees may also reach conclusions on this subject.

involve an awful lot of detail and range rather far into some
other operations which might be jeopardized by it.

In order to demonstrate clearly beyond the shadow of any doubt, you then would have to expose a lot more material to be sure you have convinced the judge that there properly should be material withheld.

Ms. Abzug. Have any CIA officials been dismissed as the result of a leak of domestic activities or surveillance?

Mr. Colby. I do not believe so.

Ms. Abzug. There must have been. I see, even though there have been a lot of mistakes made, or some mistakes made, as you put it, and some serious damage done to the functioning of your Agency, you might complain all you wish, but the problem which has arisen was brought upon you by yourself. The damage was done not by those who seek now to adjust the situation so we can have a proper agency, but by those of you who participated in illegal activities.

Mr. Colby. I do not think they were all that clearly illegal.

Ms. Abzug. I will tell you something flatly. Let's get one thing clear right away. Opening mail of a lawyer with respect to matters affecting a client is clearly illegal. Okay I do not think there is any argument about that. I would like to hear an argument which proves otherwise.

I have shown a great deal of calm about this today, Mr.

QUESTION #11 - How many times has the CIA requested "mail cover" assistance from the U.S. Postal officials during the past five years?

ANSWER - Results of a review of appropriate files to date reflected that seven (7) requests for mail cover assistance (notation of addressor and addressee from the exterior - no opening) were forwarded to the U.S. Postal officials in connection with four (4) cases.

a. Since 1973?

ANSWER - Since 1973 the facilities of the Post Office Department were utilized for the above type of mail cover assistance on two occasions. In one of these cases, mail cover assistance was originally requested in June 1972 and extended to continue until May 1973, at which time the mail cover was terminated.

b. How many individuals and/or organizations were involved for each of these time periods?

ANSWER - During the period from February 1970 to 25 March 1975, seven (7) individuals, two (2) organizations and two (2) locations were involved.

During the period from January 1973 through 25 March 1975, three (3) individuals, two (2) organizations and one (1) location were involved.

BELLA S. ARZUG, N.Y., CHAIRWOMAN
JIM WRIGHT, TEX.
LEO J. RYAN, CALIF.
JOHN CONYERS, JR., MICH.
HERBERT H. MACDONALD, MASS.
E. KUSS, CALIF.
HARL HARRINGTON, MASS.
BREW MAGUIRE, N.J.

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SAM STEIGER, ARIZ.
CLARENCE J. BROWN, OHIO
PAUL H. MCCLOSKEY, JR., CALIF.
225-3741

NINETY-FOURTH CONGRESS

Congress of the United States
House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

March 19, 1975

ole 75-0699

Honorable William E. Colby
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Director:

As agreed to at our hearings on March 5, 1975, attached is a set of written questions for inclusion in the hearing record.

Please have your responses to these supplemental questions delivered to the Subcommittee office, along with the corrected transcript, by April 4, 1975.

With best regards,

Sincerely,

William G. Phillips

William G. Phillips
Staff Director

Encl.

1. In your testimony you included a number of references to the issuances in August 1973, and March 1974, of both "instructions" and "directives" on the problem of what kind of collection is proper and what kind of collection is not proper. Were all those issuances directive in nature and were they incorporated formally into the CIA's regular set of directives or were they instructions, and therefore advisory rather than binding on the recipients? To what operating levels were those "directives/instructions" addressed within CIA?
2. On page 10, you state that the Privacy Protection Study Commission will be given access to the agency records system.
 - a. Which systems will be accessible by the Commission?
 - b. Will staff as well as Commission members have access?
 - c. Where will access take place?
 - d. What agency personnel, or categories of personnel, will be available to the Commission members or staff?
 - e. What other ground rules will be suggested by the CIA?
3. Why would the repeal of section 3(j) jeopardize the CIA responsibilities when in fact section (k)(1) protects information subject to section (b)(1) of the Freedom of Information Act--classified records?
4. Assuming (k)(1) is not sufficient protection in your view, what is the narrowest parameter within which the Congress could require broader access by individuals to information held about them by the intelligence community?
5. In your testimony, you indicate that requests by individuals for access to information pertaining to them will be allowed if it does not reveal sources or methods.
 - a. How many requests have been made?
 - b. How many have been approved in whole or part?
 - c. How many have been denied?
6. Please elaborate on the concept of sources and methods. For example would a reference to an individual in a domestic newspaper be considered a "source."
7. You refer also on page 2 to material "subject to determination by other agencies" and on page 17 to material falling "within the responsibility of agencies other than the CIA."

page two

7. b. If information about an individual is subject to or within the responsibility of another agency, do you so notify the individual?
8. On page 16 of your statement, you refer to determinations of the likely attitudes of individuals whom the Agency might want to contact.

How are these determinations made? Do they involve surveillance of any type? Do they involve interviews with other persons? If so, are these persons advised that they are giving information to the CIA?

9. Would you oppose a GAO audit of CIA information systems published in annual notice under the Privacy Act?
10. Have any CIA officials been dismissed as a result of discovery of possible illegal or questionable activities regarding domestic activities? How many?
11. How many times has the CIA requested "mail cover" assistance from the U.S. Postal officials during the past five years? Since 1973? How many individuals and/or organizations were involved for each of these time periods?



CENTRAL INTELLIGENCE AGENCY

Office of Legislative Counsel
Washington, D. C. 20505

Telephone:

11 April 1975

TO: Mr. L. James Kronfeld, Counsel
Subcommittee on Government Information
and Individual Rights
House Government Operations Committee
House of Representatives
Washington, D.C. 20515

Jim:

Attached are our responses to the
supplemental questions posed by the Subcommittee
concerning the Director's testimony on
5 March 1975.

Assistant Legislative Counsel

Attachment

FORM 6-68 1533 OBSOLETE
PREVIOUS
EDITIONS

(40)

STAT

STAT

FOLLOW-UP QUESTIONS

Assistant Legislative Counsel

4151

11 April 1975

Attached is a copy of the final responses to the supplemental questions posed by Chairwoman Abzug's Subcommittee concerning the Director's testimony on 5 March 1975.

STAT

[Redacted Signature]

Assistant Legislative Counsel

cc: Messrs. Knoche, DDO, DDA,
DDI, DDS&T, D/OS, C/IRS,
OGC.

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Assistant Legislative Counsel

EXTENSION

NO.

DATE

11 April 1975

STAT

TO: (Officer designation, room number, and building)

DATE

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Attached is a copy of the final responses to the supplemental questions posed by Chairwoman Abzug's Subcommittee concerning the Director's testimony on 5 March 1975.

STAT

Assistant Legislative Counsel